United States Court of Appeals

for the Second Circuit

APPENDIX

Appeal

75-7259

Supreme Court

OF THE STATE OF NEW YORK

APPELLATE DIVISION -- SECOND DEPARTMENT

FRANK LOWELL,

Plaintiff-Appellant,

-against-

LEM INSTRUMENT CORP.,

Defendant-Respondent.

B

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Volume II -- Pages 337--657

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Docket No. 75-7259

FRANK LOWELL
v.
TWIN DISC, INC.

EXHIBIT

PAGINATION AS IN ORIGINAL COPY

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MR. BOBBE: That's all.

THE COURT: Step down, sir.

(Whereupon, the witness was excused by the Court.)

THE COURT: Next witness.

J O H N H. B A T T E N, of 3030 Michigan Boulevard, Racine, Wisconsin, called to testify on behalf of the defendant, and being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HUGHES:

Q Mr. Batten, what is your occupation?

A I am the president and chief executive officer of Twin Disc.

Q Am I talking loud enough so that you can hear me?

A Yes, sir. Thank you.

Q How long have you been associated with Twin Disc Corporation?

A I have been employed there since 1935.

Q Can you tell us just very briefly what your academic background and training has been?

A Yes. I graduated from Andover in 1931, from

Yale in 1935 with a degree in economics, and in 1949 I got a certificate of mechanical engineering from the University of Wisconsin, the night extension division, and I have done courses in various subjects since, and currently am doing one in international relations.

Q What is your title? What office do you hold at Twin Disc at the present time?

A I am the president and chief executive officer. There is no chairman, but I also serve as chairman.

Q Are you also a director of the LEM Corporation, the defendant in this case?

A Yes.

Q Can you tell us in a general way also what the nature of the business of Twin Disc Incorporated is?

A Well, Twin Disc is a world-wide very specialized manufacturer of industrial power transmission equipment. We build a wide range of products including power shift transmissions, hydraulic torque converters, fluid couplers, axles, differentials, industrial clutches and many combinations of these items.

Q Can you tell us also approximately how long you have been the president and the chief executive officer of Twin Disc?

A I can tell you that exactly. I have been the president since September, 1948, but not the chief executive officer. I have been the chief executive officer since April, 1960 when the chairman died.

Q Does Twin Disc Corporation have any subsidiary corporations?

A Yes, we have quite a few. We are actually located around the world, and we have at this moment eight wholly owned subsidiaries, and one joint venture, a ninth subsidiary, if you will, in Japan. We are on five continents, and we have two subsidiaries in this country, including LEM.

Q In connection with your responsibilities as president of Twin Disc, was it part of your job to keep abreast of the operations of the subsidiary corporations?

A Yes, indeed.

Q And did you keep abreast of their affairs in a general sort of way?

A I made my best effort to do so, sir. I have always had monthly reports from the managing directors. I am a director at least on each of the subsidiary boards. I have made it my business to keep personal contact with these companies. I can say that there is very little that has gone on in them that I haven't been generally aware of, but not

always in complete detail.

Q Did there come a time when Twin Disc was contacted by Mr. Lowell who is the Plaintiff in this action?

A In December, 1967, by letter.

Q Mr. Batten, I show you what has been marked as Defendant's Exhibit A in this action and I ask you if that is the letter from Mr. Lowell to which you refer?

A Yes, sir.

Q Did Twin Disc respond to that letter in any way?

A Yes, sir. I phoned Mr. Lowell. It sounded very interesting to me, the products he described. They happened to include products which I felt would be of extreme interest to Twin Disc.

Q And you had a telephone conversation with him, did you?

A Yes, sir.

Q When you referred to the products he described, that is the products he described in this initial letter to you, is that correct?

A Yes, including the miniaturized electric clutches, but also the references to control systems of an electronic nature because we were in the process of developing some of

our own electronic control systems for power shift transmissions, and this sort of thing, and from the description of Mr. Lowell's work, it was obvious to me that we might gain quite a step forward by association with his operations.

Q I don't want to go into this in any depth, but what were the kinds of customers who used the kinds of products that you make? I'm not necessarily interested in names, but what were the kind of industrial users?

A The products where I felt his expertise could apply were power shift transmissions with hydraulic torque converters on earth moving materials, handling machinery for people such as International Harvester, J.I. Case, Allis Chalmers, and others. Also, of course, I was interested in the miniaturized electromagnetic clutches because I was aware of the fact that these had a tremendous future in the business machine industry, and whereas we were clutch manufacturers we were totally without any experience in that size clutch, and in that industry, and I felt that we might find a place for ourselves in something very useful.

Q You told me that in response to that letter you telephoned Mr. Lowell and had a conversation with him. Can you give me the substance of that conversation?

MR. BOBBE: Your Honor, all of this

is merged in the written contract, and I object to it on those grounds.

THE COURT: Overruled.

A I told Mr. Lowell that I thought that his letter was interesting to Twin Disc potentially but that to explore the issue, that my own time was limited at the moment and that I would like to send two people out there, officers of the company, Twin Disc, to see what he had, to talk further with him and to give me a report on the matter.

Q Did you indicate who those two people were?

A Well, Mr. Gibson and Mr. Howell.

Q And did Mr. Gibson and Mr. Howell in fact go to -- when you say go out, do you mean come east here?

A Did they what, sir?

Q I say, did those two gentlemen in fact come here, come here to the east to see Mr. Lowell?

A Yes, they did.

Q Then negotiations commenced, is that correct?

A They recommended to me that we should investigate, we should go into negotiations with the principals of LEM to acquire the company.

Q Did you from time to time participate in those negotiations?

A Actually not too much in depth, Mr. Hughes, because again, with the wide flung problems of Twin Disc, I simply didn't have that amount of time to devote, and people who were experts in doing this sort of work were doing the preparatory work in the last analysis. I had to agree with their recommendations.

I should say that Mr. Gibson was then employed as vice president, corporate level development, so a major part of his work was then currently given to examination of a merger or acquisition candidates, and to developing the case, while Mr. Howell was vice president in finance, who normally did the financial structuring of our proposals. So, I really came into it only after their investigations were fairly complete, and following several months of preliminary negotiations with Mr. Lowell.

THE COURT: After that there was a merger, wasn't there?

THE WITNESS: Yes.

THE COURT: Let's get right down to that, Mr. Hughes.

BY MR. HUGHES:

Q Now, under the merger, what was the arrangement between the stockholders of LEM and your company?

A Well, we exchanged shares.

MR. BOBBE: I object to that.

THE COURT: That has already been covered in the evidence, Mr. Hughes.

Q Do you recall the conversation as to compensation paid to Messrs. Lowell and Everett for their shares?

A Yes. We paid Mr. Lowell $3,680 and half that number to Mr. Everett, so the market value of the whole exchange at that time was $150,000.

Q After the acquisition Messrs. Lowell and Everett remained in the employ of LEM, is that correct?

A They did indeed.

Q And they had written contracts which are marked in evidence here in this action, and you are aware of that, are you not?

A Yes.

Q As a matter of fact, you have been present throughout the trial, have you not?

A Yes, sir.

Q Up to this point?

A Yes, sir.

Q What was Mr. Lowell's compensation?

MR. BOBBE: Your Honor, that's

contained in the written contract.

THE COURT: Yes, sustained.

Q In addition to his salary, did he have the use of an automobile?

A Yes, he did.

Q Do you know what the cost, or approximate cost of that was?

A Approximately $150 a month.

Q Do you recall, or can you tell us the approximate amount of the compensation which Mr. Lowell received in fact received from the time of the takeover until the time when the business ceased to operate?

A $157,000.

Q Did Twin Disc infuse any capital into LEM?

A After the original acquisition we put in an additional $482,000.

Q Including the original acquisition and the $482,000 how much was involved?

A $632,000

Q Did there come a time when you requested Mr. Lowell to prepare an Operations Plan for LEM Instrument Corp.?

A Yes, sir.

Q I show you a document dated June 30, 1968 and

ask you to look at it and tell me whether that is the Operations Plan.

A Yes, this is it.

MR. HUGHES: I offer it in evidence.

MR. BOBBE: I object to this copy because I was furnished with a copy that is varied in some respects on the cover, and I would like to offer my adversary this instead.

(Submitting document to Mr. Hughes.)

MR. HUGHES: Will your Honor bear with me so we can straighten this out?

THE COURT: Certainly. When was this plan dated?

THE WITNESS: June, 1968, your Honor.

THE COURT: I assume that this plan was not already introduced in evidence?

MR. HUGHES: Yes, that's correct. May we go off the record for a minute?

THE COURT: Yes.

Off the record.

(Discussion off the record.)

MR. HUGHES: Mr. Stenographer, would you please read back the last question?

(Whereupon, the last question was read by the reporter.)

THE COURT: Submitted by whom, Mr. Witness?

THE WITNESS: It was submitted by Mr. Lowell for the IEM Corporation, sir.

MR. BOBBE: May I ask a question on the voir dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. BOBBE:

Q Was it submitted to you personally or to Mr. Gibson or to somebody else?

A Mr. Bobbe, it came to me, but I honestly don't recall whether it came by hand from Mr. Lowell or through Mr. Gibson.

Q You don't recall when it was received, do you?

A Yes, sir. I received it -- all of these operating statements and forecasts I had to have before the commencement, or by the commencement of our fiscal year which is July 1, so I received it either June 30, 1968 or July 1, 1968.

Q But you don't know whether it came directly

from Mr. Lowell or was a copy of what Mr. Lowell had submitted, do you?

A Mr. Bobbe, I don't recall whether I got the original transcript. I assume I did. I don't recall whether it came in the mail or was handed to me, but I identify the document as the original operating plan for the first complete fiscal year's start.

Q That's the one that you received, but you don't know whether it came directly from Mr. Lowell or from Mr. Gibson or from some other source?

A No, I have to presume that it was approved by Mr. Lowell as the president of the company, but I don't recall the details of how it reached my desk, sir.

THE COURT: Is it on the letterhead of LEM?

THE WITNESS: Yes, it is.

THE COURT: Is it signed by anybody?

THE WITNESS: No, it's not signed, your Honor.

THE COURT: All right.

MR. BOBBE: I object to it as not being identified as to when and how it was received from Mr. Lowell.

THE COURT: Overruled.

***** (Document above referred to was marked Defendant's Exhibit LL in evidence as of this date.)

BY MR. HUGHES:

Q Now, Mr. Batten, are you generally familiar with the operations of LEM between 1968 and 1972?

A Yes, sir, I am.

Q Was it a successful operation or not?

A No, unfortunately, it didn't prove to be a success.

Q Can you tell us briefly and in a general way what the operating losses were?

A We, over a period of four years, lost something like $255,000. That was through the '72 year end.

Q And you are talking --

A June 30, 1972.

Q You are talking about direct operating losses?

A Direct operating loss of $255,000.

Q Were there any other losses?

A Well, there were unrecovered expenses met by Twin Disc. Did you wish those enumerated?

Q Please.

A We early in the game asked Mr. Gibson to function as chairman, so much of his time for this whole period was devoted directly to aiding and supporting LEM. LEM had a small organization. They were operating on a limited budget. Twin Disc paid Mr. Gibson full salary, of course, while he spent most of his time for four years trying to help LEM.

We also hired Mr. Panhof. I forget what date we employed him, but I recall it was about 1970 or '71. The record will have to make that clear. We paid Mr. Panhof full salary and expenses as an aid to Mr. Lowell so that we would have another qualified trained salesman available to help Mr. Lowell spread the product, the sales effort, over a wider market recognizing that Mr. Lowell was running the business and did have to spend a part of his time at home in the office running the business.

So these expenses, of course, are not reflected in the direct operating loss. We contributed them because we felt we had a program that justified this support without penalizing Mr. Lowell's own budget.

We also did give him strong advertising support out of the Twin Disc budget.

Q Exhibit LL in evidence, the Operations Plan,

contains certain statements of objectives. I am going to ask you certain questions with reference to those objectives.

Mr. Batten, one of those objectives as stated in this document dated June 30 was, 1,"The development of a total in-house manufacturing capability (except for highly specialized surface finishing heat treatment and the like)."

Was that objective of LEM attained?

A This objective was accomplished.

MR. BOBBE: Pardon me. Before he goes further, I think it's important to fix the date of this, of the receipt of this document, because if it was received subsequent to the entry of the making of the contract of July 3, 1968, it would be merged in that contract, and I think I have a document now which would show that it was not received by Mr. Batten or by his company prior to the making of the contract.

THE COURT: It was not received prior?

MR. BOBBE: Not prior to the making of the contract, no, sir.

THE COURT: I understood the witness

to say that these reports usually reached him before the end of the fiscal year which was July 1 of each year.

Is that right?

THE WITNESS: That is correct, sir, but I cannot specify the exact date that I received this because this was the Operating Plan for the first year of operation under Twin Disc ownership, and it may be that I didn't receive this until the agreements were finally solved and that date, to refresh my memory, was July --

THE COURT: July 3rd.

THE WITNESS: Mr. Bobbe, I concede that I may not have received this regardless of the date, until the merger was agreed to and formalized.

MR. BOBBE: Then I object to any further questions about this because all of these objectives were merged in the contract.

THE COURT: Well, you made the argument that if it was before the contracts were signed that it should be kept from evidence because

it was merged in the contract. Now it appears that the plan was received after the contracts were signed.

MR. BOBBE: Well, it cannot be received to modify the contract.

MR. HUGHES: It's not a question of that.

THE COURT: It's not a question of modifying, it's a question of performance, what was done.

MR. HUGHES: Exactly, your Honor.

THE COURT: Objection overruled.

BY MR. HUGHES:

Q Another objective stated in the Exhibit LL is The expansion of LEM's staff as necessary for the realization of goals.

Was that expansion achieved?

A In a reasonable manner it was, both by Mr. Lowell's action in bringing in Mr. Samuel, who made a very valuable contribution, and by Twin Disc supplementing the staff from its own payrolls, and I would like simply to state that my objective in doing this at Twin Disc's expense was not to load in expense on the part of LEM which would have had a bearing on

other terms of the contract and perhaps deprive Mr. Lowell and Mr. Everett of that much more incentive to perform profitably for their own future interests.

Q A third objective was the development of an organization of commissioned sales representatives to cover the entire continent.

A This objective was never accomplished.

Q Fourth, the expansion of the product line by internal development and/or acquisition of compatible control devices.

A Certainly to the extent that the encoder was developed internally, a start was made toward achieving this objective.

Q Was anything else done in that direction?

A There were several alternative constructions -- not constructions, but arrangements of the encoder, and a certain progress was made in that direction.

Q Another objective was the achievement of a stable recognized position as a manufacturer of precision clutches, brakes and other control devices.

Was that achieved?

A In part and for a time to the extent that the clutches were accepted and acknowledged as first quality in

the aerospace industry, and to the extent that they were employed by the government on a torpedo, an underwater torpedo, I would say that the representation of the company had been established to the extent that the encoder developed a reputation and recognition for the company. I'd have to express my views supported by evidence of a survey that we never accomplished this.

Q Another objective was the achievement of $300,000 of sales during the next fiscal year with pre-tax profits of $50,000.

A As I recall, we achieved sales of $27,000 and a loss.

Q Do you remember what the amount of the loss was in that first year?

A Mr. Hughes, I don't.

Q Well, it's in evidence in any event.

A It could have been $40,000 or $50,000, but I don't recall that.

Q Another objective would be undertaking of joint ventures in the control field with other segments of the Twin Disc organization. Was that achieved?

A No, sir. I did endeavor to convince Mr. Lowell that as we needed electronic controls, engineering

design work and guidance, that he could help us considerably by entering directly into our development of these controls. The alternative was for us to have gone out, which we did, to hire electronics engineers ourselves, so Mr. Lowell's position was that whereas the objective was interesting, and he would normally have been delighted to participate, that he felt it would actually delay him in accomplishing the goals of LEM, and I conceded the point, so that my answer to that is, no, we made no progress in that direction.

Q This same Operations Plan on page 2 speaks of the means of achieving the objectives and among other things one of the means of achieving the objectives was stated to be "Perform market analyses in selected specific markets."

To your knowledge, was that done?

A I feel it wasn't.

Q Another means of achieving objectives was to "Expand direct sales efforts."

A To what, sir?

Q To expand direct sales efforts. Was that done?

A If it was done, it was done largely by Twin Disc personnel loaned to LEM to implement Mr. Lowell's efforts, recognizing that he was one man and couldn't be ten

places at once. But, I criticized Frank throughout in a friendly and cooperative way, I hope, for having spent too much of his time in the office at a time when the product introduction would seem to have required the best brains and the greatest conviction in the LEM organization to develope one or more specific growth accounts for the encoder in particular. So, I give him credit for what he did in selling clutches which occurred before we merged LEM into Twin Disc. I criticized him throughout our association for not making more of his personal time directly available to the establishment of sales successes in the field.

Q You said that Twin Disc itself attempted to help this sales effort. What did your company do in that regard?

A Well, we employed Mr. Danhof. We looked for a man with expertise in the sales and application, engineering application of electronic devices. We employed him, put him on the Twin Disc payroll and sent him to LEM to work full time for LEM at no cost to LEM. Besides this, we took the chairman of LEM, Mr. Gibson, a Twin Disc vice president, and I specifically asked him to put the majority of his time and effort in developing LEM's sales program.

Q Under the heading of article 6, Marketing Plan,

one of the items provides for Technical Articles, and begin effort to place a meaningful article in a respected publication by January, 1969. Plan more active participation in technical societies.

To your knowledge, was that done?

A Well, Mr. Hughes, to my knowledge no such articles were written, only the sales literature and the trade advertising and catalogs.

Q To your knowledge between 1968 and 1972, did Mr. Lowell establish a schedule for a regular field visit to any sales representatives?

A A schedule for what?

Q A schedule for regular field visits by sales representatives.

A Well, I am unaware of any schedule that was ever established or maintained, and in fact, it was only towards the end of the association that I am aware we ever had any field reps.

Q Now, you have told us about the operating losses of LEM during this period. Were they ever discussed at a Board meeting?

A Yes, of course.

Q Can you give me the substance of any of that

discussion that you can now recall?

THE COURT: Board meetings of which corporation?

MR. HUGHES: I'll take it both ways, your Honor.

Q Were these operating losses discussed at directors' meetings of the LEM Corporation?

A Yes, they were.

Q Were they also discussed at directors' meetings of the Twin Disc Corporation?

A Yes, sir.

THE COURT: Was the Plaintiff present at those meetings when these discussions took place, sir?

THE WITNESS: Mr. Lowell, your Honor, was present at all of the Board meetings of the LEM Corporation.

THE COURT: All right.

THE WITNESS: So he had to be aware of the fact that Twin Disc was very unhappy about the failure of our operations at LEM.

THE COURT: I see, but he wasn't present at the meetings of the Board of

directors of the Twin Disc Corporation, was he?

THE WITNESS: No, sir.

THE COURT: I'll limit it to the meetings of the Board of LEM only.

BY MR. HUGHES:

Q Will you tell us your recollection of the discussions on this subject?

MR. BOBBE: Your Honor, the minutes of the meetings would be the best evidence, and I think they should be produced.

THE COURT: Conversations are not always put in minutes, specific conversations. Actions of the Board after deliberation are usually put into the minutes, but that doesn't necessarily mean that every word said at the Directors' meeting was recorded in the minutes, so I'll overrule your objection.

A Will you restate the question, Mr. Hughes?

Q I would like you to tell us to the best of your recollection any discussions that you can recall at meetings of the Board of directors of LEM on the subject of the poor operations record of LEM.

THE COURT: When Mr. Lowell was present.

Q When Mr. Lowell was present.

A I'll try to digest this then to say that Mr. Lowell admitted that our operations were falling far short of forecast. He pointed out initially that he had no control obviously over the disintegration of the aerospace program, so this was a government decision which he had no responsibility for, and this delayed his sales of the clutches for the Apollo space vehicle.

He also pointed out that he had hope of repeat orders for the Guidance System clutches on the torpedo. Beyond that he pointed out that we were essentially then back on alternative products.

The first product name was encoder. From the catalog which is a matter of evidence here I had understood correctly or incorrectly that the other products which were listed as being available from LEM were much closer to the market than they ultimately turned out to be, so Mr. Lowell pled for time to develop the product. I spent a lifetime in an engineering business. I know these things take time. I tried in every reasonable way, while being fair to our parent companies shareholders, to provide time and resource. We

actually put $482,000 more capital into the business. We sustained these annual losses. We talked about the matter at our quarterly directors' meetings. Frank had no real excuse except that he was having trouble getting the product developed out of the door and sold.

There was much discussion about whether the product was really in complete enough form to be sold.

THE COURT: Is that the encoder you are talking about?

THE WITNESS: The encoder, your Honor, so the evidence which we turned up from the field suggested that the encoder could be sold if we would implement it by auxiliaries that required additional engineering work and manufacturing.

It was my judgment that the combination of Mr. Lowell and Mr. Everett and Mr. Panhof and Mr. Samuel were fully competent to define the product, to design it, and to manufacture it. Mr. Lowell maintained that this would be taking time away from the main event, and that he shouldn't do this. So, we allowed his view to prevail, and, of course, in retrospect, he

had to have been wrong because we didn't develop the sales volume that would justify the operations.

So, the discussions were quarterly. It was discussed more often than that in person between the Chairman, Mr. Gibson, and Mr. Lowell, but it was never overlooked throughout our relationships because the company in four years time simply ran up a $255,000 dead loss and no business could consider that satisfactory performance, particularly with the optimistic outlook which we felt that we had before us at the time of merger. So, I do not think that the original forecast represented misrepresentation; I think that was just a major miscalculation in the event.

Q During the course of these discussions at the meetings in 1968 and 1969, did various members of the Board offer encouragement to Mr. Lowell in what he was endeavoring to do?

A From the standpoint of Twin Disc participants, always, because again we are engineering oriented and we know what the trials of product development are. So, the Board

had subsequently been reinforced -- the LEM Board, your Honor -- by the introduction -- or say by the appointment to the Board of Mr. Beaton, our manufacturing vice president. So, we had in addition to Mr. Howell, our financial vice president, and myself, Mr. Gibson who is a professional mechanical engineer, was for years the sales manager of our hydraulic division, and Mr. Beaton, our top manufacturing man, and we tried in every way we knew how to encourage Mr. Everet and Mr. Lowell with their business. So, we got each year new assurances from LEM management that this year they were going to make the grade, but it just never happened.

Q Did you in 1968 and 1969 urge Mr. Lowell to hire sales representatives?

A Yes, sir. I did.

Q Did he in fact hire sales representatives on any considerable scale?

A Mr. Hughes, it is my impression that they came and went, and when I questioned Mr. Lowell on this, he said, "You have to understand that we are talking about an item that's not easy to sell. It's small, very specialized. It has a delimited market. I have got to have exactly the right people or I'm not going to prove a thing."

So, I deferred to his judgment in an area where

I had literally no experience, but Twin Disc products are sold almost entirely by direct factory sales engineering representation. I have had no essential contact with sales reps from outside.

THE COURT: At this time, we will suspend for lunch.

Members of the jury, don't discuss the facts of the case, and form no opinion in it. Return please at two o'clock.

(Whereupon, the jury was excused, and the following occurred in their absence:)

MR. HUGHES: Your Honor, may we approach the bench?

THE COURT: Yes.

(Discussion at the bench between Court and counsel, not within the hearing of the reporter.)

(Whereupon, a luncheon recess was declared.)

AFTERNOON SESSION

(Roll call of jury.)

DIRECT EXAMINATION

BY MR. HUGHES: (Continued)

Q Mr. Batten, did there come a time when you became dissatisfied with the operating performance of LEM?

A Yes, Mr. Hughes, by the end of 1969.

Q And what if anything did you do about it?

A First I urged Mr. Gibson as the chairman to do what he found feasible to do to structure the business for some positive progress, because by early 1970 we were making no sales at all. Then in the Board meetings, I expressed my views on the subsequent dissatisfaction with LEM to Mr. Lowell, the president.

Q Now, you referred to the fact that in 1970 there was a period when there were no sales at all, and there is documentary evidence on that in the record right now.

MR. BOBBE: By the end of '69?

THE COURT: He became dissatisfied by the end of '69. 1970 he says there were no sales at all.

MR. HUGHES: For certain months.

Q During that period, did you have any discussions with Mr. Lowell, or make any suggestions when that absence of sales came to your attention?

A That was when I proposed to Mr. Lowell that he could help us and LEM both by doing electronic controls

engineering work for Twin Disc.

Q And what did he say?

A He felt that it would interfere with his program, and he declined to undertake to do it.

Q In 1971, were operations still unprofitable?

A They were.

Q Do you recall an incident in 1971 involving an employee by the name of Samuel?

A Yes, sir.

Q You became aware of the fact that Mr. Samuel had been fired by Mr. Lowell, is that right?

A That's right.

Q When did that come to your attention, and how?

A It came to my attention by a letter from Mr. Samuel mailed shortly after his discharge.

Q I show you a letter and ask you if this is the letter that Mr. Samuel wrote and that came to your attention.

A Yes, that's it.

MR. HUGHES: I offer that in evidence.

MR. BOBBE: Your Honor, I object to this as not binding on the Plaintiff.

THE COURT: Overruled.

****

(Letter above referred to was marked Defendant's Exhibit MM in evidence as of this date.)

MR. HUGHES: Your Honor, I would like to read this to the jury.

THE COURT: Yes.

(Whereupon, Mr. Hughes read Defendant's Exhibit MM in evidence to the jury.)

BY MR. HUGHES:

Q Now, upon receipt of that letter, what did you do?

A I telephoned Mr. Lowell and informed him that I wanted him to come to Racine and explain this to me.

Q What did he say?

A He told me that he considered that it was fully his business as president of LEM, and he wouldn't come.

Q What did you say to that?

A I told him that he nevertheless worked for Twin Disc, that I was the president, and that I would require him to come.

Q Then what happened?

A Well, after a brief interval, if I recall it was over a weekend, he came.

Q And did he discuss the incident with you?

A Yes.

Q Can you remember the substance of that discussion?

A He pointed out that in his view he -- the man had been insubordinate, and was not -- he found that his supervision was too much of a burden for him to handle, so he said that he felt that as president of the corporation he was entitled to discharge people for cause. So I then questioned him on the record made before the social security, or uninsurance people, and he said that the man had come back of his own free will to finish the job, had then been offered employment, and had declined it, so that he felt the discharge was no longer the most recent act, that this was a case of Mr. Samuel then willingly leaving.

I then raised the question of the ethics of terminating him without termination pay, or holiday pay, and I told him that we would pay that at Twin Disc, that as he was president of LEM, and he felt this man under his supervision was no longer suitable for employment I probably would have to let that stand, but I disagreed with him. I felt he had used poor judgment in how he handled it, and it didn't sound to me like good management.

Q Well, did Twin Disc in fact pay Mr. Samuel vacation pay and severance pay?

A Oh, yes. We paid him two weeks vacation and two weeks severance.

Q Do you recall an incident in 1972 involving the discharge of Mr. Everett?

A Yes.

Q By Mr. Lowell?

A Yes, indeed.

Q Do you recall when that was brought to your attention?

A Yes, I do.

Q Will you tell us when it was brought to your attention, the circumstances, and what you thereafter did about it?

A It was brought to my attention verbally in the first instance after Mr. Everett had called Mr. Gibson, and Mr. Gibson had dictated a memorandum to me by long distance telephone from his home. And, at that stage I then wrote to Mr. Lowell and asked him for a full explanation of this incident because, as I stated in my letter, he had exceeded his authority as president of LEM in discharging an employee who had a Twin Disc guarantee on his employment

contract. I think that letter was dated August 27th.

Q Is that the letter that has been marked in evidence here while you have been in the Courtroom?

A Yes, sir.

Q The letter of explanation to you?

A His letter of explanation was dated August 31. I suppose it's in evidence. I don't remember.

Q What in fact thereafter happened? Was Mr. Everett re-employed?

A Pardon?

Q Was Mr. Everett thereafter re-employed?

A Technically I assume he was because Mr. Gibson had instructed him to return to work.

Q I don't want to go over it all again, but you are aware of the fact that he came back and remained there until the business was wound up, correct?

A Yes, sir.

Q Did there come a time when action was taken by the sole stockholder of LEM, namely the Twin Disc Corporation, looking towards the discharge of Mr. Lowell?

A Yes.

Q And the winding up of the business?

A Yes.

Q When was that, do you recall?

A That was in the early part of September, 1972.

Q I show you a paper and ask you if this is a copy of the minutes of the special meeting of the shareholders at LEM Instrument Corporation on that day.

A Well, this, Mr. Hughes, took place in October. This was the special meeting of the shareholders of LEM Instrument Company.

Q Let me have that exhibit back. Tell me what happened at the meeting.

A Well, the gathering was right after Labor Day in September, 1972, to discuss what we were going to do about this. So, in the first place none of the forecasts or business plans had come anywhere near furition, so if at the very best they were serious miscalculations, we joined in concluding that the arbitrary handling of people, particularly people as valuable as Mr. Samuel had been simply spoken of as grievous mismanagement, and then for Mr. Lowell to fire his associate and the other member of the pair whose services we essentially had bought when we acquired LEM, disregarding the contractual limitations which would have prevented the president of LEM from firing the vice president, we considered that the business, A, was being so grievously mismanaged by

Mr. Lowell and had so completely failed to fill any of its expectations, had mounted up such losses that represented such an accumulated investment on the part of Twin Disc, that there was no point in maintaining the business. So, we felt that the only course we could take was to discharge Mr. Lowell for cause, for the cause of mismanagement.

MR. BOBBE: Your Honor, this testimony as to what "We thought" without any definition of who the "We" was, and evidently it was not the Board of Directors --

THE COURT: He said it was a Board of Directors' meeting. Is that correct?

THE WITNESS: No, sir. This was a management meeting of Twin Disc Incorporated, which included the executive vice president.

THE COURT: All right. Strike out the conversations and the conclusions reached by the Board as testified to in detail by this witness. However, as a result of the meeting of the management of Twin Disc was a decision made to discharge him?

THE WITNESS: Yes, your Honor.

THE COURT: I'll take that much.

THE WITNESS: And I made --

THE COURT: The rest of the answer is stricken, and the jury will disregard it.

BY MR. HUGHES:

Q Following that decision, was there a meeting of the shareholders of LEM Instrument Corporation?

A Yes, there was, on October 4th.

Q I show you these minutes and ask you if they are the minutes of that meeting.

THE COURT: The shareholders or directors?

MR. BOBBE: Yes, the shareholders.

THE COURT: I thought you said of LEM?

THE WITNESS: This is the shareholders of LEM Instrument Corporation.

MR. HUGHES: Yes. I beg your pardon, Twin Disc is the shareholder.

I offer it in evidence.

MR. BOBBE: I have no objections.

*****

(Document above referred to was marked Defendant's Exhibit NN in evidence as of this date.)

MR. HUGHES: Your Honor, I won't read the whole part, but just this:

"Resolved, that the best interests of the company will be served by removal of Frank Lowell and Robert Everett as members of the Board of Directors. Therefore, it is further resolved that Frank Lowell and Robert Everett be and are hereby removed as members of the Board of Directors effective immediately, and the vacancies thereby created not be filled at this time."

BY MR. HUGHES:

Q On the same day, was there a special meeting of the Board of Directors of LEM Instrument Corporation?

A Yes.

Q I show you this paper consisting of two pages and ask you whether this is a copy of the minutes of that meeting.

A Yes, these are the minutes of the meeting.

MR. HUGHES: I offer them in evidence.

MR. BOBBE: No objection.

***** (Document above referred to was marked Defendant's Exhibit OO in evidence as of this

date.)

MR. HUGHES: I'll not read the whole thing, your Honor, but may I just read this:

"Resolved that Frank Lowell and Robert Everett are herewith terminated."

MR. BOBBE: I think you should read the beginning of it, too.

MR. HUGHES: Well, all right. I'll be glad to.

"Minutes of a special meeting of the Board of directors of LEM Instrument Corporation. At special meeting of the Board of directors of LEM Instrument Corporation, held in the offices of Twin disc Incorporated, Racine, Wisconsin, on the 4th day of October, 1972, commencing at approximately eleven-fifteen a.m., present were John H. Batten, Robert T. Howell and Wilton B. Gibson, members of the Board.

"The directors heard the report of Wilton B. Gibson and the circumstances surrounding and leading up to the unauthorized discharge of Robert Everett by Frank Lowell, together with the general review of the failure

of the company to meet its anticipated goals.

"After discussion it was resolved that Frank Lowell and Robert Everett herewith be terminated for cause as employees and officers of LEM Instrument Corporation effective immediately."

Do you want me to read any further?

MR. BOBBE: Yes, please.

MR. HUGHES: "Further resolved, that Wilton B. Gibson and Robert T. Howell, either or both or them are authorized to negotiate with Frank Lowell and Robert Everett with respect to the possible acquisition by them or either of them of the assets of LEM Instrument Corporation, and also in relation to their employment contract, and to agree upon and to accept such terms and conditions with respect thereto that they deem appropriate with the advice and approval of counsel, and of representatives of Twin Disc who have an interest therein."

MR. BOBBE: That's all. I don't ask you to read the rest. It's not necessary

to read the rest unless you want to.

MR. HUGHES: No, all right.

BY MR. HUGHES:

Q Now, at that meeting there was a discussion among the members of the Board of Directors?

A Yes.

Q Present before these resolutions were adopted, is that right?

A That is correct.

Q Will you tell us what the considerations were that the members of the Board of Directors took into account at that time in coming to the decision to terminate the employment and to wind up the business?

MR. BOBBE: I object to that as not in the presence of the Plaintiff.

THE COURT: We won't take conversations, but I'll take what they based their decision on.

MR. HUGHES: Yes, sir.

A The decision was based on Mr. Lowell's failure to manage the business successfully, failure to create and maintain harmonious relationships with his employees, failure to even approximate the forecast on which Twin Disc was

offered and purchased the business, the continued losses and the absence of any prospect for future operations of the company.

So, we felt that we had no other alternative than to discharge Mr. Lowell for cause. We felt that under the circumstances there was no way to preserve a team which we had essentially bought when we acquired LEM and that therefore we had simultaneously to terminate the business.

MR. HUGHES: I have no further questions, your Honor.

CROSS EXAMINATION

BY MR. BOBBE:

Q Mr. Batten, there has been introduced in evidence the minutes of -- can you hear me?

A Yes, sir.

Q (Continuing) -- the minutes of the Board of Directors held on October 4, 1972, and the minutes reflect the fact that the directors heard the report of Wilton B. Gibson as to circumstances surrounding and leading up to the unauthorized discharge of Robert Everett by Frank Lowell.

Was that report of Mr. Gibson in writing?

A No, that was a verbal report, Mr. Bobbe.

Q Did Mr. Gibson mention at the meeting that Mr.

Everett had been reinstated and was carrying on his duties in the usual way after Mr. Gibson had told him to go back?

A Yes, he reported that.

Q The only other statement made in these minutes is "The report as to the unauthorized discharge together with the general review of the failure of the company to meet its anticipated goals."

Did you believe that you had a right to discharge Mr. Lowell under his contract merely because the goals, the anticipated goals were not achieved as far as sales and profits were concerned?

A Mr. Bobbe, for the general cause of failure to manage the business successfully, to establish and maintain a good working organization, for the failure to go out and take the necessary steps for market development along with the failure of the business to operate profitably over a period of four years.

MR. BOBBE: I move to strike out the answer as not responsive.

THE COURT: No, I'll allow it. Overruled.

Q I ask you whether or not the failure of the company to meet its anticipated goals was in your opinion a

sufficient ground to terminate the contract of Mr. Lowell.

A Mr. Bobbe, if --

Q Can't you answer that yes or no?

THE COURT: That failure alone he is asking you about now, not the others that you have mentioned.

A In a qualified way, yes.

Q You would say that the failure to meet the anticipated goals --

A Over a period of four years.

Q Four years. Did you see anything in the contract of employment that warranted you in reaching that conclusion?

A I think if we reread the conditions of employment there is a clause there that clearly states that he must successfully operate the business and maintain a good and viable organization, and this he had failed unfortunately to do.

Q I ask you to look at the contract which is Plaintiff's Exhibit 2, and see if you can find anything in there to the effect that he must successfully operate the business.

A Perhaps if I have the advice of my counsel, I

can save the Court's time in picking out the clause, because I know they know where it is.

MR. HUGHES: Would you look at paragraph 1?

A All right. May I read this, Mr. Bobbe?

Q Yes.

A All right. "Lowell is herewith employed by LEM as general manager and president of the company for the term of seven years beginning as of the date of this agreement so long as he shall faithfully and diligently perform the duties of his employment and shall engage in no activities which are detrimental to the business interests of LEM or Twin Discs."

Q Do you find anything in there to the effect that he agreed to make it successful?

A I feel that he engaged in activities --

Q No, please answer the question. Do you find anything --

THE COURT: Specifically, is there anything in there?

Q Is there anything in the contract?

A As to maintaining financial success? No, but may I point out that by continued losses he was contributing

to the detriment -- in fact he was detrimental to the business interests both of LEM and Twin Disc.

MR. BOBBE: Well, I move to strike it out as not responsive.

THE COURT: Strike it out as not called for in the question. The jury will disregard it.

Q Are you aware of the fact that in the guarantee agreement which is attached to this employment agreement, Twin Disc guaranteed performance of the terms of this agreement to be performed by LEM and to vote its share of LEM's stock to elect Lowell to LEM's Board of Directors during the life of this agreement? Do you remember that clause?

A Mr. Bobbe, I'm sorry, you know my hearing problem. Would you read it once more or let me look at it?

Q I'll let you look at it. The first sentence. (Indicating)

A Yes, I'm aware of this.

Q Well, when you had your shareholders' meeting you elected to remove Mr. Lowell as a director of the corporation, did you not?

A For cause, Mr. Bobbe.

Q No, I'm talking about in the meeting of the

shareholders. You elected to remove him as a director for cause, is that what you say?

A Yes.

Q Would you point that out to us in the minutes?

THE COURT: Well, whether it's in there or not, under the law the directors have a right to dismiss an employee for cause. The guarantee is good unless the person who is on the Board does something that amounts to a violation of the contract, and amounts to discharge for cause, or rather gives reason to discharge him for cause. You don't need that in the agreement. That's a matter of law.

MR. BOBBE: I'm talking about the removal of a director, not the discharge of him under his employment contract. He said he was removed as a director for cause.

THE COURT: All right.

A Well, all I can say, Mr. Bobbe, is that I felt that I was acting properly under the advice of counsel, to remove them as officers and directors for cause.

Q But there is nothing in the minutes of the

shareholders' minutes to [illegible] you were removing the directors for cause, is there?

A I'm afraid there isn't, but this was the intention, so the minutes may not be appropriate.

Q Those minutes were prepared by your counsel, were they not?

A No, those minutes were prepared by Mr. Howell. I think it's signed by him, too. No, I signed them.

Q Well, when you had the meeting of the Board of Directors there was present John H. Batten, Robert T. Howell and Wilton B. Gibson. Those three director's were not there.

A Yes, sir.

Q Are you aware of the fact that the bylaws of this corporation, and the Corporation Laws of the State of New York require that any action of the Board of Directors is to be taken and held by a majority of the entire Board of Directors?

A We felt that in this instance we were acting as a majority, the entire then present Board of Directors.

Q Were you acting as a majority of the directors still in office, you mean?

A That's correct.

Q But you were not acting as a majority of the

entire Board of Directors, were you?

MR. HUGHES: Your Honor, I object to that. They were the entire board.

THE WITNESS: Yes.

MR. HUGHES: (Continuing) -- The Board of Directors at that point.

MR. BOBBE: Sir, I must contest that under the business laws expressly employing the entire board, and the entire Board of Directors is defined in the Business Corporation Law as the board constituted as being in the full amount of the board permitted to be elected regardless of any vacancies.

THE COURT: If a person is no longer a member of the board he certainly can't be counted as being among the directors who have the decision to make.

MR. BOBBE: Yes, sir, but under they bylaws it refers to the entire board, not as to the board with those who remain after vacancies are created.

THE COURT: How can you have them on the board when the vacancies are there?

MR. BOBBE: I didn't say they were on the board.

THE COURT: Overruled. Go ahead.

BY MR. BOBBE:

Q Mr. Batten, did you have any reason, any cause to discharge Robert Everett?

A Yes, Mr. Bobbe, because when we bought this company we bought a team of two men. When one of them failed in our considered judgment to provide adequate management, the remaining man was not going to serve to operate this business, and we considered that the business had then become no longer viable and we therefore no longer had a position for him.

Q Well, he still had an employment contract, didn't he?

A Yes, he did.

Q And you removed him for cause, is that right?

MR. HUGHES: Your Honor, I object to this as incompetent, irrelevant and immaterial. We are not trying Mr. Everett's lawsuit here.

THE COURT: I think we have gone pretty far afield. I have given you a great deal of latitude, both of you, in introducing

other contracts, but there is a limit, and I think we ought to limit this to the issues of this case only. I want to make it perfectly clear that Mr. Everett is not a party in this lawsuit.

MR. BOBBE: Oh no, no.

THE COURT: All right.

BY MR. BOBBE:

Q You had already received, when this meeting was held, the explanation that Mr. Lowell had given you in his letter of August 31, as to why he exercised his judgment in discharging Mr. Everett as an employee?

A I received his letter.

Q Did you make any further inquiry of him as to the validity of his explanation to you?

A No, sir. I didn't.

Q Did you get any report from anyone as to the reason -- as to whether his reasons were sound or otherwise?

A As the record will reveal, I sent Mr. Gibson out to have discussions with Mr. Lowell in September. I had Mr. Gibson's verbal report.

Q What was his verbal report?

A His verbal report stated that, A, Everett had

been fired and that Everett -- and that he, Gibson, had instructed Everett to return to work over Mr. Lowell's instructions to Mr. Everett.

Q Well, thatwas the only report you had, wasn't it?

A Well, I had Mr. Lowell's explanations. I didn't consider those sufficient, Mr. Bobbe.

Q Did you ever write to Mr. Lowell and --

A No, I didn't. I sent somebody -- I sent the Chairman of the Board of LEM out there to verify all of the facts by discussion with both of the parties.

Q Do you know whether he did verify the facts?

A It is my impression that he did.

Q Well, do you know whether he did?

A Well, how do I know? I mean, he could put it in writing and if I were not there to hear the thing myself I would have his word for it, but he has been a trusted employee of Twin Disc for several decades, and I had every reason to depend on his judgment or I never would have seen him elected chairman.

Q Well, did he render any written report as to that meeting?

A He didn't of his preliminary meeting, but there

are written reports that he subsequently made.

Q You mean after the discharge?

A I can't be sure of the date, Mr. Bobbe. It was a year ago, and I simply don't remember.

Q Well now, you had made up your mind long before Everett was discharged that you wanted to wind up this company, didn't you?

A No, Mr. Bobbe.

Q Hadn't you made plans for the termination of the company --

A No, sir.

Q (Continuing) -- as far back as 1971?

A No, sir.

Q I show you this letter dated February 18, 1971, on the letterhead of Twin Disc, and marked "Personal and confidential" and addressed to Mr. W. B. Gibson, and a carbon copy to Mr. R. G. DeLong, and Mr. R. T. Howell, and I ask you if you wrote this letter.

A Yes, I wrote this letter.

MR. BOBBE: I offer it in evidence.

MR. HUGHES: No objection.

THE COURT: From you to --

THE WITNESS: To Mr. Gibson, your

Honor.

THE COURT: All right.

(Letter dated February 18, 1971 was marked Plaintiff's Exhibit 27 in evidence as of this date.)

*****

BY MR. BOBBE:

Q You say it was to Mr. Gibson? It was also to Mr. Howell and Mr. DeLong. Who is Mr. DeLong?

A The executive vice president of Twin Disc, Mr. Bobbe.

Q This letter is written, "Subject, LEM Instrument Corporation. Reference, R. G. DeLong's memo February 16, 1971.

"As you recall I made this same proposal to you and to Frank Lowell one year ago when Frank Lowell felt he had no particular expertise in electronic controls. The situation may or may not have now changed. Inasmuch as LEM continues to fall dramatically below its forecast I have to assume that we are not far from deciding to sell LEM pursuant to the terms of the contract, at which time it would also be logical to release Danhof.

"I wish to formalize our plans in these respects as part of our overall program of budget reduction

facing a new year of sharply reduced Twin Disc operations. You will admit that our LEM forecasts to date have been entirely misleading.

"I should like your up-to-date and doubtless similar forecasts on LEM, and your recommendations in connection therewith.

"John H. Batten."

Wasn't that followed up by consultation with counsel as to how this company was going in July of 1971?

MR. HUGHES: I object to that, your Honor.

THE COURT: Overruled.

Q As to how this company would be -- how LEM would be terminated?

A I explored the legal alternatives to it, but I was persuaded by Mr. Gibson that the outlook for the business was too good for us to consider it at that time.

Q Who is Michael Batten?

A My son, Mr. Bobbe.

Q Didn't you ask Michael Batten to prepare a strategy report for the divesiture?

A I asked him to explore, Mr. Bobbe, what the legal alternatives were for us to follow if the continued

mismanagement of the business and failure to get onto a profitable footing made it impossible and unfair for our shareholders to continue to hold it.

Q Did you receive this report by him on our about October 7, 1971?

MR. HUGHES: What was the date?

MR. BOBBE: October 7, 1971.

MR. HUGHES: Report from whom, Mr. Bobbe?

MR. BOBBE: From Michael Batten.

MR. HUGHES: All right. Excuse me.

A Yes, I received this report.

MR. BOBBE: I offer that in evidence.

MR. HUGHES: No objection.

***** (Report above referred to was marked Plaintiff's Exhibit 28 in evidence as of this date.)

(Whereupon, Mr. Bobbe read Plaintiff's Exhibit 28 in evidence to the jury.)

BY MR. BOBBE:

Q Who is Mr. R. S. Gibbs?

A Our legal counsel, behind you.

Q Thank you.

Now, the end of the fiscal year would have been June, 1972, is that correct?

A June 30, yes.

Q It was proposed at that time that another review be undertaken to see if -- it says, "Our corporate earnings could absorb the losses incurred with the LEM divesiture. In the interim, it is recommended that Twin Disc make certain operating changes regarding its control of LEM. It is suggested that a system of management by objectives be instituted and that Frank Lowell be held to account for meeting objectives set down by the Board of Directors.

"It is further recommended that the Board of Directors undertake to document the managerial capabilities of LEM management, and Frank Lowell in particular. This would serve to build up evidence which could be used at a later date should it be necessary to enter litigation in the disposal of LEM."

MR. BOBBE: I'm reading on page 2 now, Mr. Hughes.

MR. HUGHES: Which paragraph?

MR. BOBBE: Third paragraph.

MR. HUGHES: Thank you.

MR. BOBBE: "It was agreed that it

would be to Twin Disc's benefit to take the initiative and enter a suit in Federal Court in Milwaukee under Section 10, Subdivision 5 of the Securities Act, as well as try to obtain a Declaratory Judgment in it. In the former case we would have to prove that Lowell and Everett made misrepresentations about LEM, its customers and its future.

"To win a Declaratory Judgment we would have to prove that Lowell had not carried out its management duties diligently. If Twin Disc doesn't take the initiative to enter suit, it is almost certain that Lowell will take us to Court in an attempt to get the highest possible judgment from us.

"To go the litigation route would require from one and a half years to three years in Court at a cost of $10,000 to $25,000.

"The effect on 1972 Twin Disc earnings would be a $67,500 loss, and more important, we would lose control over the timing of the major loss associated with the employment contract. It is more probable that we would

try to settle the employment contract out of Court in which case the payment would be made immediately, or over the four-year duration of the contract, after which the assets could be sold. The four-year payoff would cost us $131,000 in 1972 earnings, while the more likely immediate payoff costs would cost us $205,000 in losses.

"It is for these reasons that we recommend against the dissolution of LEM at the present time, and further recommend that the question be raised again by next July in light of the business forecast for fiscal year 1973."

Q Now, this was all considered and received by you long prior to any disbute between Lowell and Everett or Lowell and Samuel, isn't that true?

A The initiation of our options, our legal options apparently from the dating of the correspondence you have was in early 1971. This preceded any knowledge that I had of a disbute between Lowell and Everett.

MR. HUGHES: Your Honor, the exhibit is dated October 7, 1971. The discharge of

Samuel preceded that date.

Q When you had sales forecasts, you realized that these were only a sort of a prophecy as to what might be expected and not something that had to be achieved, isn't that so?

A Well, Mr. Bobbe, I think that it is unlikely that any business can survive where responsible forecasts are not made and met because ultimately you would go broke, so LEM had in fact long since gone broke. We had kept, year after year, resupplying it with money. We got new forecasts. The new forecasts were, if anything, worse than the previous ones.

Q Well, you knew that the sales for the fiscal year ending June 30, 1972 were twice as much as the sales of the previous year, didn't you?

A Mr. Bobbe -- yes, but --

Q Can't you answer yes or not?

A Yes, but the point is that they were of insignificant amounts, not anywhere near enough to justify a company.

Q You knew that this was a new device that was being marketed, one that had great potential in the future, but would take time to develop, didn't you?

A Mr. Bobbe, it was listed as a developed product on the original brochure before we bought LEM. The encoder was listed as the product. We thought they were developed at that point. We found out that we were talking about a different encoder. We went through three years of development on this different encoder, and we failed to sell it.

Q But you knew that this was a completely new development based on Mr. Samuel's invention, didn't you?

A Well, it was a new design, but I would never consider that it was entirely new development.

Q Well, you learned very early in this that they were going to go into this new development in 1969. You heard of that, didn't you?

A This is why we kept putting money into the business.

Q And you knew that the new development, as an engineer, that it takes a great deal of time and effort and money to develop itself successfully, didn't you?

A Yes, and we had run out of it in our judgment, and we had done a survey of the market through professional consultants which put a very definite limit on the prospects for the sale of this particular encoder.

Q Where did you get that information from?

A We hired a firm of engineering and management consultants to do the survey.

Q Did you give a copy of that report to Mr. Lowell?

A I assume he saw it because he was a party to their study which took place out of the LEM offices, Evans Associates.

Q You remember that he made comments about the reports that were delivered to you and Mr. Gibson?

A I can't be certain what comments he made. I think he disagreed in part with it, but we, after several years of failure, we brought in outside experts to give us some idea as to what we might anticipate.

Q Don't you recall that Mr. Gibson said that he accepted Mr. Lowell's comments about this report and that he was satisfied that it was correct, that his comments were correct?

A Mr. Bobbe, Mr. Gibson's enthusiasm for, and faith in LEM outlasted mine a year and a half, and I happen to have been proved right on it.

Q Well, you had great confidence in Mr. Gibson, you say?

A Yes, I did.

Q And he was still enthusiastic when you decided to terminate the operations, correct?

A May I clarify the record? I didn't decide to terminate LEM until September, 1972.

Q I understand, but even at that time Mr. Gibson was still enthusiastic about the product, wasn't he?

A Mr. Bobbe, according to his report to me, no, he had conceded that we had failed.

Q Do you have that written report?

A No, sir, I don't. I considered that when two people in a top management group are working together there is much that transpires that is verbal.

Q Then you say it was a verbal report?

A Yes. You can put him on the witness stand [illegible] will doubtless bear me out.

Q All right, we'll see.

I just wanted to call your attention to this telegram that you sent to Frank Lowell and ask you if this -- dated August 13, 1968 -- and ask you if this doesn't refresh your recollection that even by that date you had not yet received the operations plan that was dated June 30, 1968.

A Yes, I recall this, and I admitted to you later -- earlier today, that I wasn't certain when I had got the plan.

Normally, I would expect to get it the 1st of July. Obviously, I got it late and called Mr. Lowell's attention to the fact that this wasn't satisfactory.

Q So you did receive it ~~after~~ August ~~28th~~, is that it?

A Apparently, I did.

MR. HUGHES: May I see the document before you hand it to the witness?

THE COURT: Is it in evidence?

MR. BOBBE: No, it's not in evidence. I merely showed it to him to refresh his recollection.

MR. HUGHES: I offer it in evidence, your Honor.

MR. BOBBE: I have no objection.

*****

(Document above referred to was marked Defendant's Exhibit PP in evidence as of this date.)

MR. HUGHES: May I read it to the jury, your Honor?

THE COURT: Yes.

MR. HUGHES: This is a telegram to Mr. Frank Lowell, 'Re, Operations Plan. Agree

LEM should extend building lease to November 30, 1970. Also concurrent two additional machine tools as requested. Your June 30 plan presented to me only today with no explanation of six weeks delay enroute. Twin Co, Batten."

BY MR. BOBBE:

Q Do you know, Mr. Batten, whether you received that from Mr. Lowell or from Mr. Gibson?

A Mr. Bobbe, I don't recall. That was five years ago. I get a lot of papers.

MR. BOBBE: No further questions, your Honor.

THE COURT: Step down.

(Whereupon, the witness was excused by the Court.)

MR. HUGHES: Your Honor, I call Mr. Danhof.

GORDON D A N H O F, of 4347 Meacheam Road, Racine, Wisconsin, called to testify on behalf of the defendant, and being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HUGHES:

Q Mr. Danhof, are you employed by Twin Disc Incorporated?

A Yes.

Q How long have you been employed by Twin Disc?

A Approximately three years.

Q Prior to your employment by Twin Disc, what was your business experience?

A I have been engaged in sales and marketing for approximately twenty-four years by a large company called Honeywell Incorporated, an instrument company, another called Syncro-Capasitor Company, and another called Varitex, in Grand Rapids, Michigan.

Q Were all of your relations with those companies friendly, with the people you worked with, friendly and cordial?

A Yes. I was branch manager for Honeywell for over eighteen years.

Q When you came to Twin Disc, what job or assignment were you given?

A I was hired specifically to aid the marketing efforts of LEM Instrument Company.

Q LEM being a subsidiary of Twin Disc Corporation?

A Yes.

THE COURT: You came with them in 1970?

THE WITNESS: Yes, sir.

Q Your salary, however, was paid by Twin Disc Corporation, is that right?

Yes, I was hired by Twin Disc, the parent corporation.

Q Did you at that time, when you first started in, did you devote all of your time and efforts to LEM Instrument Corporation?

A I devoted 100 per cent of my working hours to LEM.

Q What were your duties at LEM Instrument Corporation? What were you hired to do?

A My primary duty was to make sales calls on behalf of the sales effort for LEM Instrument, under the direction of Frank Lowell.

Q In this connection, of course, you had occasion to deal with and be in contact with Mr. Frank Lowell, is that right?

A Yes.

Q Frequently and regularly, is that correct?

A Yes.

Q Now, as an individual, how did you -- what kind of a fellow was he? How did you get along with him?

A Well, he was very good to get along with until I proposed changes in his modus operandi, and then he would be a little abrasive with me.

Q Well, how long were you --

MR. BOBBE: I move to strike that out as a conclusion, your Honor.

THE COURT: No, I'll allow it.

Q How long were you there when you first started making suggestions?

A About two weeks.

Q After that two-week period the relationship between you and him changed to some extent, is that what you are saying?

A No, not the relationship. There was never any dramatic change. It was just that when I would make suggestions that he improve the product or do things to seek a better market place or improve his marketing efforts, he would become abrasive, negative toward suggestion.

THE COURT: Well, did he refust to adopt your suggestions?

THE WITNESS: Yes.

Q Can you recall any of the suggestions that you made to which he deferred?

A Yes. The first one I made was that we should have -- you see, Frank did a good job of advertising the product and developing interest in it by getting people to send in coupons asking for further information. I suggested that we have a method of following up on these inquiries such as to further clarify the fact that they were indeed interested in the use of the product, and I suggested this by means of direct mail techniques that we would mail mailings out with additional literature and advertising, trying to stimulate their interest and get another return back to us.

Q How did he respond to that?

A He didn't believe in direct mail.

Q Pardon me?

A He did not believe in direct mail.

Q Did he say that to you?

A Yes, in exactly those words.

Q Did you make any other suggestions to him?

A Yes. I wrote a data sheet on a secondary device called the Comparator, a digital comparator, and I wrote it to him -- sent it to him to ask him to take a picture of the device which he had built, of which he had built one,

and add his comments to the operating specifications, but he would not do that, and he told me further on numerous occasions that there was no market for this device.

MR. BOBBE: You say you sent him something?

THE WITNESS: Yes.

MR. BOBBE: Was that in writing?

THE WITNESS: Yes.

MR. BOBBE: I think it should be produced here, your Honor.

THE COURT: Well, he sent it to your client.

MR. BOBBE: But he said he sent something to him, and he tried to describe the contents. I think that the contents -- that the writing would be the best evidence.

THE COURT: Well, you would have that letter, wouldn't you?

MR. BOBBE: Oh no, no. We don't have the records of LEM Instrument.

THE COURT: All right. Is it available?

THE WITNESS: It was a catalog data

sheet --

THE COURT: Wait.

MR. HUGHES: (Submitting document to Mr. Bobbe.)

BY MR. HUGHES:

Q Mr. Danhof, is this the document to which you were referring?

A Not the exact one, no.

MR. HUGHES: I ask that that be marked for identification.

THE WITNESS: I am referring -- these represent examples of places where suggestions I made would have been. Had they been implemented, our business would have been improved.

MR. BOBBE: Your Honor, I move to strike that out.

THE COURT: Yes, strike it out. How do you know that?

THE WITNESS: Well, one of the examples --

THE COURT: You're not sure about that, are you?

THE WITNESS: Yes, I am.

THE COURT: That that would have brought additional customers to you?

THE WITNESS: Yes, sir.

THE COURT: What do you base that on?

THE WITNESS: Because the item that I was describing was a piece of equipment that would be attached to our LEM encoder and produce an operating device. I have been in the instrument business, as I said when I sat down here, twenty-four years, and the instrument must do something for someone in the way of saving them time or labor or perform a function of his manufacturing operation.

THE COURT: Well, is it possible that after showing a prospective customer the thing you say should have been shown that the customer would not give you an order? Isn't that possible?

THE WITNESS: I'm sorry, I don't understand your question, sir.

THE COURT: Isn't it possible that notwithstanding the adoption of your suggestion, that a customer might not give you an order?

I mean, is there any certainty that every customer that you would contact would buy it?

THE WITNESS: Oh, no. I agree with you there. That's -- that statement is true.

I meant to say that the business would have been improved.

MR. HUGHES: Your Honor, there has been a reference to this paper, so I ask it be marked for identification. It's not the paper to which the witness testified earlier.

THE COURT: A memo is it?

MR. HUGHES: It's a memorandum on the letterhead of LEM Instrument Corporation dated February 18th, to Mr. Frank Lowell, from Gordon Danhof.

THE COURT: February 18th of what year?

MR. HUGHES: 1972.

*****

(Memorandum dated February 18, 1972 was marked Defendant's Exhibit QQ for identification only as of this date.)

THE COURT: For identification only.

MR. HUGHES: Your Honor, we will con-

tinue to look for the document to which the witness referred, and if we find it we will produce it.

THE WITNESS: I made further recommendations as to --

THE COURT: Wait a minute. You haven't been asked anything yet.

BY MR. HUGHES:

Q Did you make further recommendations?

A Yes.

Q Tell us what --

MR. BOBBE: If they are in writing, I think they should be submitted.

THE COURT: I don't hear you.

MR. BOBBE: I say, if they are in writing, they should be submitted..

THE COURT: Yes. If they were in writing, they should be submitted.

THE WITNESS: It's on that sheet.

Q Is this part of the recommendations you made?

A Well, it's a good summary of what I had been making from time to time.

Q Mr. Danhof, you and Mr. Lowell were in daily

contact with each other, weren't you, except when you were on the road?

A Practically, yes. I was on the road most of the time.

Q Did you make oral suggestions to him?

A Yes.

Q You talked in terms of having made written suggestions, but in the course of your suggestions, did you make oral suggestions to him?

A Yes.

Q Were the oral suggestions that you made to him of the same general nature as those that you recorded in memoranda?

MR. BOBBE: Your Honor, I'll object to that as calling for a conclusion.

THE COURT: Overruled.

A Yes.

Q Forgetting the written recommendations for the time being, what oral recommendations did you make to Mr. Lowell? Take your time and tell us what they were, and what his response to those suggestions were.

MR. BOBBE: And the time.

Q And the time.

A Well, they are written right here too.

Q All right. Tell us what they were.

A All right. The oral recommendations were that we should be more demonstrative in describing the operation and interfacing of the encoder to computers, for example, numerically controlled machines. The basic makeup of an electronic engineer is such that he wants to know what is inside, what the signal is like. For example, one of our competitors would show the signal of the encoder on an oscilloscope and take a picture of the signal, provide it, show it to the engineers in order for them to be able to look at the defects in the signal, or imperfections so to speak, and interface it with our machines.

Q Whenyou say interface, would you describe to us what you mean by interface?

A Well, an interface would be the same as if you had -- as if you built an engine and you wanted to sell this engine to a man who made vehicles. An interfacing would be a diagram showing how the engine would fit in the vehicle and produce the power that the customer wanted. Interfacing electronics is the same way. It shows the number of wires and the voltage and the other features of the signal that he would interface.

Q And you recommended that your company do this?

A Yes.

Q And you made this recommendation to Mr. Lowell?

A Yes.

Q What was his reaction.

A He wasn't going to show anything -- he didn't want to show anything about the encoder itself.

Q Did he adopt your recommendation or decline it?

A Declined.

Q Did you make any other oral recommendations to him?

A I think that I may have made some from time to time, but I just can't recall any more right now.

Q Do you say that the paper now before you represents a written recommendation which had also been orally given to him?

A Well, this paper is a summary of recommendations I had made from time to time.

MR. HUGHES: I offer it in evidence.

MR. BOBBE: No objection.

(Whereupon, Defendant's Exhibit QQ for identification was received and marked in

evidence.)

BY MR. HUGHES:

Q This February 18th memorandum, Exhibit QQ in evidence, this was in fact given to Mr. Frank Lowell, is that correct?

A Yes.

Q Following that did you write a memorandum to Mr. Gibson, the Chairman of the Board of LEM, a copy of which I now hand you?

A Yes, I wrote this.

MR. HUGHES: I offer it in evidence.

THE COURT: Show it to your adversary.

MR. BOBBE: No objection.

*****

(Document above referred to was marked Defendant's Exhibit RR in evidence as of this date.)

MR. HUGHES: Your Honor, I would like to read this to the jury, if I may, these two exhibits.

THE COURT: Yes.

(Whereupon, Mr. Hughes read Defendant's Exhibits QQ in evidence and RR in evidence to thejury.)

BY MR. HUGHES:

Q Incidentally, can you tell me what O.D. means?

A Outside diameter.

Q Do you recall any other suggestions that you made?

A Yes. I have had a little time to think.

I made many suggestions that we should try to market our product -- we should select certain marketing areas where nonusers of encoders -- we knew they were using them, therefore, actually their competitors would be prospects for buying also, and I would call this rifle marketing approach versus a shotgun approach which -- or trawling as what I described Frank's marketing method, and I didn't feel it was effective. I would say the recommendations were something similar to what was testified to this morning, encoders to meet the market to be of different sizes, different variations, with engineering modifications, and I found about -- well, several markets where these could be applied, where people would use them involving the different encoders and different package presented.

Q What was Lowell's reaction to that?

A Similar to what Henry Ford said when --

THE COURT: No, what was it now. Did

he accept it or did he not?

THE WITNESS: No, he did not accept it.

THE COURT: That's all we need.

Q Did you at any time urge Mr. Lowell to make calls on prospects and on customers?

A We made a couple of calls together.

Q How many calls did you make?

A Well, I know of three specifically.

Q Do you recall any others?

A Not offhand.

Q Are you aware of any other calls that Mr. Lowell made except those that you have indicated he made with you?

A Yes, but I'm aware that he called on the Navy Department in Rhode Island because he told me the names of the purchasing agent, the people there.

Q Did you follow up on that?

A I was working on it at the time, yes.

Q You were actually working on it at that time?

A Well, I had made the call and in comparing notes with him, I found out that he had transactions with them earlier.

Q Mr. Danhof, while you were employed by Twin Disc, did you make any actual sales for LEM?

A Yes.

Q Did you make more sales calls for LEM than Mr. Lowell did?

A Yes.

MR. BOBEE: Well, I'll object to that.

THE COURT: No, I'll allow it. You were employed full time as an outside salesman, right?

THE WITNESS: Yes.

THE COURT: Mr. Lowell was not employed to go out and just make sales, was he?

THE WITNESS: That's correct.

THE COURT: All right.

BY MR. HUGHES:

Q Did you compile a list of customers of LEM with which you had personal contact?

A Yes.

Q I show you these two pieces of paper and ask you whether this is the list or a copy of the list to which you referred.

A Yes, this is a copy I made.

MR. HUGHES: I offer it in evidence.

MR. BOBBE: May I ask the witness what is this a list of, please?

THE WITNESS: A list of customers where I was influential in making a sale of the LEM product.

MR. BOBBE: I move to strike out where he was influential, your Honor.

THE COURT: Well, places you called on anyway.

THE WITNESS: Yes.

THE COURT: After which they gave orders?

THE WITNESS: Yes.

THE COURT: Overruled.

MR. BOBBE: No objection.

***** (Document above referred to was marked Defendant's Exhibit SS in evidence as of this date.)

MR. HUGHES: Ladies and gentlemen of the jury, this is a list of two pages of such customers.

BY MR. HUGHES:

Q During the time that you were out selling for LEM, did LEM have sales representatives?

A Not that time I was selling, no. To the best of my knowledge, we had none.

Q Did you interview sales representatives and suggest their attention by Mr. Lowell?

A Yes.

Q What was Mr. Lowell's reaction to those suggestions?

A I never heard from him on them. He never replied, or I think we -- well, I wouldn't want to say. I know we discussed them, but I can't recall the gist of our conversations as to them.

Q Do I understand that over your career your work has been essentially in sales, that is the sales of products?

A Yes.

Q That means actual selling of products to customers and prospective customers, is that correct?

A Well, sales and marketing.

Q Sales and marketing. Now, based on your general experience and your specific experience while you were

selling for LEM, did you form an opinion as to whether LEM's sales could have been improved?

MR. BOBBE: I object to that on the grounds the witness is not qualified as to his experience in the sale of the encoders, shaft encoders.

THE COURT: Yes, sustained.

Q Can you tell us the extent of your experience in the sale of encoders prior to the time when you started selling encoders for LEM?

A Well, I had no experience selling encoders before I went with LEM.

Q So that when you went to LEM you had to acquire the knowledge of the skills?

A Yes.

Q And then go out and sell?

A Yes.

Q Did you do that?

A Yes.

Q Mr. Danhof, I show you a series of letters -- I withdraw that.

I show you a letter dated November 24, 1970, and I ask you if this is a letter which you wrote to Mr. Lowell,

two letters of November 24th, to Mr. Lowell.

A Yes, I recognize both of them.

MR. HUGHES: I offer them in evidence.

MR. BOBBE: No objection.

***** (Two letters dated November 24, 1970 were marked Defendant's Exhibit TT in evidence and Exhibit UU in evidence as of this date.)

BY MR. HUGHES:

Q Mr. Danhof, were there any instances where the failure to supply information to a customer, or prospective customer, resulted in no sale to that customer?

MR. BOBBE: Well, I object to that as calling for a conclusion.

THE COURT: Yes, I think so. You have to have more of a factual indication on that.

Q Do you recall any instances of calling on a customer who requested information in connection with a prospective order?

A Yes.

Q Can you give us such a specific indication?

A Well, that one right there was almost canceled, but that's the one I have in mind. In the same company, in Maryland, I demonstrated the encoder. He was pleased with it,

and he was making again an automatic stacking system.

He sent an engineer to New York to see Frank, to visit Frank at the plant, and he did not receive adequate information from Frank about the operation of the encoder. So, this engineer went back to Frank and said -- went back to his friend, John Maddock, in Maryland, and said, "I can't get any information from him. I can't tell you whether it's a good product or a bad product."

So, John Maddock called Frank on the phone and again queried him as to the type of signal and some technical information about the encoder, and he again was -- he was met with a resistance, and an answer of no.

So, I came into Maryland -- it must have been two or three weeks later. I had no record of this at the time, and I called up John and asked him if I could come down and talk to him, and he gave me a very negative answer. He didn't want to see anybody from LEM and didn't want anything to do with us. He was buying someone elses. His big objection was that he couldn't tell what the signal was like. So I said, "John, let's talk about it. Let me come over and see you. I have an encoder with me. Do you want to put the signal on the oscilloscope and we'll test it and see what the signal is like?"

THE COURT: This is John who now?

THE WITNESS: John Maddock, a customer's name.

THE COURT: All right.

THE WITNESS: So, I let him take the encoder in his hands, and he hooked up some wires to an oscilloscope, and we measured the signal on the oscilloscope and found that the signal had -- I have to use a technical term here, gritches in it, which means that the signal has some little faults, rises in it that may tend to throw off a computer actuated device, but he said, "If I could have known this I could have corrected for these deficiencies and still used your encoder."

But, he bought a competitor's encoder, a big bunch of competitor's encoders instead of ours.

BY MR. HUGHES:

Q Do you recall any other instances of that kind?

A Well, the letter that has already been admitted into evidence showed an aerojet general wouldn't consider using our encoders until we gave them further technical in-

formation about its operation.

Q Did you give them further information?

A I couldn't get it from Frank.

Q Do you recall any other instances?

A Those were the two most immediate ones.

MR. HUGHES: I have no further questions, your Honor.

CROSS EXAMINATION

BY MR. BOBBE:

Q Mr. Danhof, in your previous employment, what was the article or articles that you sold?

A I sold recording and indicating instruments for heating, ventilating and air conditioning in the industrial process, and sold electronic incapacitators, and custom built test machines for quality control inspection.

Q But you never sold any shaft encoders of any kind?

A No, sir.

Q Did you have any technical knowledge of how a shaft encoder worked?

A Yes, sir. Some, not learned, but I knew what they were and what they did.

Q You knew what they were and what they did, but

you didn't know how they were constituted and what their components were, did you?

A No, sir.

Q And you didn't know how they accomplished what they did?

A Yes, I did.

Q Will you tell us what you knew about that?

A Well, I knew that encoder was a method of measuring, making measurements over a ball screw or a rack and pinion, and a signal from the encoder was used to determine what these measurements were.

Q In other words, that was the ultimate object of the encoder, to do that, is that right?

A Right.

Q That's all you really knew, isn't it?

A Yes, sir.

THE COURT: Is it a measuring device of some kind?

THE WITNESS: Yes.

THE COURT: A measuring device of articles that could not easily be measured in any other way, is that it?

THE WITNESS: Well, it was a measuring

device because you wanted the measurement in terms of an electrical signal that could be read out in terms of a dial or read into a machine telling you that the machine was ready to --

THE COURT: A kind of instantaneous measurement, is that it?

THE WITNESS: Yes.

THE COURT: All right. I'm learning.

BY MR. BOBBE:

Q Now, you testified to a John Maddock that you spoke to, is that right?

A Yes.

Q What firm was he with?

A A company called Automatic Plated Functions.

Q Which?

A Automatic Plated Functions, in Maryland.

Q Was that referred to in your letter of February 18th?

A Yes.

Q Well now, you were referring to Automatic Plated Functions, and you referred to them wanting pictures of the wave shape taken from anoscilloscope?

A Yes.

Q So that he could properly interface with his electronics?

A Yes, sir.

Q Do you know what his electronics were?

A What is the nature of the question?

Q Do you know what his electronics were?

A Yes. I understand now. They were devices that interpreted the signal from an encoder and automatically moved storage compartments up and down tracks and into cubby-holes for storing items.

Q Did you know whether or not the encoder that was being manufactured or produced by them was one that could properly interface with his electronics?

A Yes.

Q What?

A Yes.

Q You did know that?

A Yes.

Q How do you know that?

A Because I told him our encoder produced a bianary coded decimal signal which he said he could interface with his machine.

Q Isn't that the generic nature of an encoder?

A No, sir. Oh --

Q What?

A I'm sorry, I didn't understand you. I didn't understand your use of the word generic.

Q Isn't that the generic nature of any encoder?

A Not necessarily.

Q Do you know whether that was the nature of the encoder manufactured by LEM?

A Yes, sir.

Q What was the reaction? What did Frank say about that particular request?

A I didn't hear about it because there was no request. There was an action -- oh, wait a minute. This was an action for which he had previously refused to give me, and the request came directly from the customer to Frank.

Q I say, when you wrote the letter of February 18th, what did Frank say about that?

A The next letter describes what he said. He said, "Don't write those things any more. They should be discussed verbally."

Q Where is that?

MR. KHEEL: That's Exhibit RR.

Q You are referring to a letter that you wrote to Bill Gibson?

A Yes.

Q Dated February 28, 1972, and typed March 29, 1972. You don't refer in this letter specifically to that request of John Maddock, do you?

A I think I do. Let me read it again.

No, you're right, Mr. Bobbe. I am referring to the letter of February 18 to Frank Lowell in which the business was already lost.

Q I'm asking you what Frank told you when he got your letter of February 18 about that particular request.

A Frank told me after receiving that memo not to write any more letters. That was his specific answer. There was no answer to the specific question that I recall.

Q You mean he told you not to write any letters --

A Not to write letters of that type, to conduct those discussions verbally because too many people -- and I assume he was talking about the Board of Directors of LEM -- read my mail and got excited about why he wasn't doing these things.

Q Did he make any response to that request about Automatic Functions of Maryland?

A I'm trying to recall. I can tell you what I think he said, but I don't -- I'm under oath, and I --

THE COURT: You are under oath, yes.

A I say that I can't recall his reply.

Q I see. Well, I refer to the application of Hughes Aircraft Industrial Products Division. Do you know whether or not Frank complied with the request or application data showing how our encoder worked in connection with preset positioners?

A My information is that he did not reply.

Q Did he tell you that?

THE COURT: Tell him what?

A Mr. Bobbe, I believe that his only answer to me did not answer that. Everything in that memo was, "Don't write any more memos of that type." Now, that's his answer, bang!

Q Didn't you get any answer at all from him as to any of these requests?

A I don't believe so.

Q Verbal or otherwise?

A I can't recall. I'm under oath, and I can't recall anything else he did.

Q How about Burke-Porter Machinery Company that

you referred to. They would have an easier time using our encoders and preset comparator if we had application data on the coupling to use load contacts available and so on. Do you know that Burke-Porter Machinery Company had previously given an order to LEM Instrument?

A You better believe it. I sold it.

Q I better --

A I demonstrated the encoder and I sold it.

Q Don't you know that before you sold any -- that they had already purchased encoders from LEM?

A Mr. Bobbe, you are leading into my -- that's not true.

Q I'm asking you --

A No.

Q If it's true.

A No, sir.

Q When you say you sold it, how did you sell it? Did you get a written order right away?

A That's not the way business is conducted in the electronics field. They were building a machine. I demonstrated the encoder and the preset comparator. They were going to buy from a company called Perimetrics, in Connecticut, and they didn't know that we had the preset comparator. I

demonstrated it to them. Now, the reason that all this question about contacts and coincidence lighters was because Frank and I argued out that over the phone. This was the product that Frank said wouldn't sell. I sold the first one. I wrote the data sheet for that product a year ago, referred to earlier in my testimony, and we argued it out all over the phone as to what the answer to those questions in the memo were.

Q After you wrote this memo, you didn't get an order right away from Burke-Porter Machinery, did you?

A I didn't pick up any orders, I was never there to pick up the order. They were mailed into LEM.

Q In other words, you don't know whether Mr. Lowell got in touch with them himself, do you?

A He would have had to because he had lots of questions on the comparator for which we had no specific information.

Q Did he tell you to go and see Burke-Porter Machinery?

A Yes, he did.

Q Do you know where he got the first contact with them?

A Yes.

Q Where?

A Through advertising inquiries.

Q And he told you to go and call on them?

A Yes, sir.

Q Exhibit RR is dated February 28, 1972, and typed March 29, 1972. How do you account for the fact that it wasn't typed until that later date?

A Well, I could give you my guess.

Q I don't want your guess.

A Well, I'm not going to account for it. I don't do my own typing.

Q What?

A I don't do my own typing. I wrote these out, gave them to my secretary in Racine, and she typed them up, so I can't answer the question.

Q You mean a secretary in Twin Disc's office?

A Yes.

Q The first paragraph of this letter says, "Everett and I had dinner together February 22, 1972, at his request. He wants to give the machinist Bill a raise of $15 per week and Frank will not approve."

Now, that machinist was Bill Gay, wasn't it?

A Yes.

Q "He also feels Lowell is trying to get him to resign."

What did he tell you on that point?

A That's exactly as I wrote it.

Q That's all he wrote?

A "I think Lowell is trying to get me to resign."

Q "He wants your opinion of what Frank's legal position would be if Everett did resign. Would Lowell's contract be still in force?"

"He voluntarily told me many things. I told him he should talk to you. I feel he is loyal to Twin Disc and we can depend on him to remain loyal if this is our wish."

Did he tell you at that time that he was thinking of resigning?

A No. No. He told me just what the memo said, "I think Frank is trying to get me to resign." That's all he said.

THE COURT: You are talking about Everett now?

MR. BOBBE: Everett.

Q You said Everett, is that correct?

A Everett, yes.

Q That's all he told you, and you didn't ask any

questions about that, did you?

A Well, I wasn't involved in the politics of LEM. I was just out in the road beating the bushes.

Q I see. Now, you have submitted in evidence Exhibit SS, a list of people whom you called on that orders were subsequently received from, but in each instance isn't it a fact that the orders were not received until after Mr. Lowell had been in touch with the customer himself and given them the technical data?

A No, sir. You're wrong.

Q Can you tell me in which instance you actually obtained the order?

A I'll rephrase your question if you will allow me.

THE COURT: You're supposed to answer, not ask questions.

A Well, I said no. I wanted to give him --

THE COURT: No. That's all.

THE WITNESS: All right. I understand.

Q I asked you whether you obtained any orders from any of the customers on this Exhibit SS?

A No.

Q You did call on these customers at some time?

A I called and demonstrated the equipment.

Q Do you know whether you were the first one to demonstrate the equipment to them?

A Yes, I was.

Q Do you know whether or not they had received all the technical data at that time?

A Many of them had and some hadn't.

Q Did Mr. Lowell advise you to call on each of the customers on this list?

A No.

Q Which of them did you call on on your own accord?

A Let me see it.

THE COURT: Mark them with a red pencil so we'll have a record here.

THE WITNESS: All right.

A Mr. Lowell did not advise me to go to Growth Plus Machine.

THE COURT: Check it with a red pencil.

A I'm going to check those that he did advise me on.

THE WITNESS: Would that be all right,

your Honor?

THE COURT: All right, check those that he did advise you to call on.

THE WITNESS: Okay.

A He did not advise me to go to Par Systems in St. Paul. He did advise me to go to Cincinnati, Inc. He did not advise me to go to Scientific Atlanta. He did advise me to go to General Electric, in Cincinnati.

He did advise me to go to Burke-Porter. He did not advise me to go to C.O. Porter in Grand Rapids.

He did advise me to go to Dow Chemical in Los Angeles, and he did not advise me to go to Candia, so he advised me to go to four places.

THE COURT: Out of how many?

THE WITNESS: Well, there is some duplication here, your Honor, so I want to be sure I don't give you too many numbers.

Eleven, your Honor.

THE COURT: Within the duties that you were to perform, you didn't have to get advice from the Plaintiff here to go out and --

THE WITNESS: No.

THE COURT: (Continuing) -- seek

customers, did you?

THE WITNESS: No. I'm a professional salesman, your Honor.

THE COURT: Right.

BY MR. BOBBE:

Q When you called on the customers yourself, did you do anything more than demonstrate the machine?

A I'm trying to think of how I should word that. I performed, in addition to demonstration -- there are other parts that you do in the sales approach, so I performed the selling of the encoder to the best of my knowledge and ability.

THE COURT: You promoted, right?

THE WITNESS: Promoted and tried to leave the door open to get back in, to come and see them again. I tried to influence them to specify this encoder in their machine.

THE COURT: I assume you had the price of it too, didn't you?

THE WITNESS: Well, not always because all formal quotations had to come from Frank Lowell by his rules.

THE COURT: I see.

THE WITNESS: But the standard off-the-

shelf item I could give the price on.

BY MR. BOBBE:

Q Those that you went to of your own accord, where did you get their names from?

A I was marketing on a rifle approach, and I picked out certain companies engaged in certain businesses and made calls on them. If their business fitted the category that I was trying to sell encoders to, I would call on them. Some were out of phone books, some out of the Thomas Register, some out of government codes of businesses. The standard marketing techniques.

Q Did you ever go because there were replies received to advertisements?

A Yes, I believe that those four I pointed out were replies to advertisements.

Q How about the others?

A The others -- now the others, we had -- I say "We" because I was on the team. We had thousands of inquiries from magazine readers. You are familiar with how technical magazines are printed with a little card that you check off, and the magazine editor mails you names of people who are interested in your product. So, I would collect those from Frank and in the course of my business and in my trips I would

call on anybody in an area, or call them by phone to try to get an appointment, so some of those were people who had made inquiry about the encoder. Some were just cold calls, people I thought should be using encoders. For example, the company in Maryland had never contacted Twin Disc before I called on them.

MR. BOBBE: That's all.

MR. HUGHES: I have no further questions, your Honor.

THE COURT: All right. Step down.

(Whereupon, the witness was excused by the Court.)

MR. HUGHES: Your Honor, that's it.

THE COURT: We have reached the end of the line as far as witnesses are concerned, right?

MR. HUGHES: Well, your Honor, may we approach the bench?

THE COURT: Yes. You explained this earlier. It's all right.

MR. HUGHES: But we will have one more witness, your Honor.

THE COURT: Now?

October 12, 1973
Riverhead, New York

(The trial continued.)

(Appearances as heretofore noted.)

(Roll call of jury.)

THE COURT: Call your next witness, Mr. Hughes.

MR. HUGHES: I call Mr. Gibson.

WILTON B. GIBSON, Box 414, Red River, New Mexico, called to testify by the defendant, and being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HUGHES:

Q Mr. Gibson, what is your present occupation?

A Consultant to Twin Disc.

Q Between 1967 and 1972, were you a vice president of Twin Disc?

A Yes.

Q Prior to that, were you employed in the sales department of Twin Disc?

A Yes.

Q Can you tell us briefly in a general way what

your sales experience has been over the years?

A Thirty-three years with Twin Disc essentially and some five to seven years prior to that with other firms.

Q At the time of the acquisition of LEM by Twin Disc, you became Chairman of the Board of LEM, is that correct?

A Shortly thereafter, yes.

Q Were you paid any compensation for that job by LEM?

A No, sir.

Q What were your duties as Chairman of the Board of LEM?

MR. BOBBE: Your Honor, the bylaws speak of the duties.

THE COURT: Well, generally I'll permit him to state what he had to do.

Q I'll change it. What duties did you perform?

A Primarily to assist Mr. Lowell in bringing LEM up to a successful operation, and supporting him in every way possible to attain that.

Q Did you act as a sort of "Go between" between LEM and Twin Disc?

A I was liaison between Mr. Lowell and Mr. Batten.

Q When Twin Disc took over, were you enthusiastic

about the prospects of LEM?

A Definitely.

Q Did there come a time when you began to have some doubts about the success of LEM?

A Yes.

Q When was that?

A Well, it started about the time of the Samuel incident. It was followed up by the Coruzzi firing, then the outside consultant's markets survey and recommendations, then continuing on with the inability to get Mr. Lowell to do anything that we tried to get him to do to improve the situation, and ultimately the discharge of Mr. Everett.

Q Would it be fair to say that your optimism about the chances of success for LEM lasted longer than the optimism of the other members of the Board of Directors of LEM?

A Yes, sir.

Q Based upon your discussions and observations and discussions with Mr. Batten, when would you say that he began to have doubts about the success of LEM?

A Late 1969.

Q During the period that we are discussing, were you urging the Board of Directors to support Mr. Lowell?

A Yes.

THE COURT: Board of directors of which corporation?

MR. HUGHES: Of LEM, your Honor.

Q At the risk of repetition, will you tell us what prompted the doubts that you began to have about LEM's success?

THE COURT: He already testified to that.

MR. HUGHES: I withdraw it, your Honor.

Q During the period we have been discussing, what had you been urging Mr. Lowell to do with reference to the operations of the company?

A Well, I particularly wanted him to get out and personally call on accounts because I thought it was a rather sophisticated product. We needed manufacturer's representatives so that we could get broader coverage. Those were my primary objectives.

Q Did you make any suggestions with reference to the adaptability of the product?

A Very definitely, yes, so that the customer could more readily adapt the encoder to his particular machine.

Q And these were specific suggestions that you made to Mr. Lowell, is that correct?

A Yes.

Q Did you find that Mr. Lowell was difficult to get along with?

A Yes, sir.

MR. BOBBE: I'll object to that.

THE COURT: Sustained as to form.

Q Mr. Gibson, over the period that we have been talking about, what were the relationships between you and Mr. Lowell? How did you hit it off together?

A Well, at the outset very friendly because I felt that we had quite a promise in Mr. Lowell, but I found him extremely difficult to work with. I got a lot of promise and no action.

Q Have you fixed for us the time when you came to a conclusion in your own mind that Mr. Lowell should be discharged and the business wound up? Can you fix that time for us? If you haven't, please do so now.

A Well, it was about mid '72.

Q Now, Mr. Lowell has testified -- I withdraw that.

There is testimony in this case that Mr. Lowell submitted monthly reports during the four years of operations, approximate four years of operations, while LEM was -- Twin

Disc was the owner of the LEM stock. Is that a true statement, that he made monthly reports all through that time?

A If the statements are confined to financial reports, yes, but operating reports, no.

Q Was there a period of time during which he rendered no operating reports whatever?

A Yes, there was a period of a little better than a year.

Q I show you a letter and ask you whether this is a letter which you received from Mr. Edward P. Coruzzi at or about the date it bears?

A Yes, sir.

MR. HUGHES: I offer it in evidence.

MR. BOBBE: I object to this as not binding on the Plaintiff, and as hearsay.

MR. HUGHES: It's addressed to the Chairman of the Board of LEM.

THE COURT: Sustained.

MR. HUGHES: I ask it be marked for identification.

***** (Letter above referred to was marked Defendant's Exhibit VV for identification only as of this date.)

BY MR. HUGHES:

Q Mr. Gibson, Mr. Coruzzi was at one time an employee of LEM, was he not?

A Yes.

Q Do you recall the approximate period of time that he was employed?

A About six months, I believe, so seven months.

Q Was this employment after Mr. Samuel had been fired?

A He was hired to replace Mr. Samuel in the engineering capacity.

Q Then did Mr. Lowell fire Mr. Coruzzi?

A Yes, sir.

Q Did you become aware of the facts and circumstances of that incident?

A Only through that letter that has been marked for identification.

Q Did you ever discuss this subject of the firing of Mr. Coruzzi with Mr. Lowell?

A No, I did not.

Q I show you Exhibit P for identification and I ask you who prepared that document.

A Mr. Lowell.

Q Can you tell me approximately when that document was prepared?

A Sometime during the month of June.

Q Of what year?

A 1971.

Q 1970?

A '71.

Q Were you with him when he prepared that document?

A Yes, I was.

MR. HUGHES: I now offer it in evidence.

Your Honor will recall that this was the one financial statement that he did not identify.

MR. BOBBE: May I, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. BOBBE:

Q Do you know who typed this?

A It was typed at the LEM --

Q Typed by Mr. Lowell?

A I don't know who typed it. It was typed at Farmingdale.

Q Were you there when it was typed?

A No, sir.

Q How do you know it was typed at LEM?

A Well, it was mailed to us from LEM.

Q And this has a hand-written date in the upper right hand corner, 6/3/70. Do you know who put that date on there?

MR. HUGHES: I can tell you, counsel.

A I can't be certain. It doesn't look like my writing.

Q And this was a projected statement for the year ending June 30, 1971, is that correct?

A Yes.

MR. BOBBE: No objection.

***** (Whereupon, Defendant's Exhibit P for identification was received and marked in evidence.)

THE COURT: All right, now marked Defendant's Exhibit P in evidence.

THE WITNESS: May I see that?

THE COURT: Just a minute.

DIRECT EXAMINATION

BY MR. HUGHES: (Continued)

Q Would you take a look at that exhibit again and tell me -- you said that it was prepared in 1971?

A That's exactly why I wanted to see it. It had to be 1970.

Q Yes, and it was a projection for the following year?

A That's correct, yes.

Q I show you Defendant's Exhibit Y for identification and ask you whether you wrote this letter to Mr. Lowell -- excuse me, I think it's to Mr. Lowell.

A Attention Mr. Lowell, yes. Yes, I wrote this.

MR. HUGHES: I offer it in evidence.

MR. BOBBE: No objection.

*****

(Whereupon, Defendant's Exhibit Y for identification was received and marked in evidence.)

Q This letter refers to Evie. Who is Evie?

A She was my secretary.

MR. HUGHES: Your Honor, may I read this?

THE COURT: Yes.

(Whereupon, Mr. Hughes read Defendant's Exhibit Y in evidence to the jury.)

Q Mr. Gibson, there has been testimony here by Mr. Lowell that you requested that he defer taking out the life insurance benefits. Did you make such a request?

A On the contrary, I urged him to take them out.

Q There has been testimony by Mr. Lowell that you urged him to defer taking the cost of living salary increases. Did you so urge him?

A No, sir.

MR. HUGHES: May I see Exhibit 20, please?

Q I show you Exhibit 20 which is a letter from you to Mr. McGuire at the insurance company, and I ask you to look at it please. I withdraw that.

I show you a letter dated June 18, 1969, from Mr. Lowell to Mr. McGuire of the Massachusetts Mutual Insruance Company, which constitutes one of the group of letters on the subject of insurance which has been marked Exhibit AA in evidence, and I ask you to look at that.

Mr. Lowell has testified that that letter to the insurance company was prompted by you and suggested by you. Is that a true statement?

A No, sir.

Q Do I understand you urged Lowell to take the

insurance benefits?

A I certainly did.

Q Now, in the accounts and records of LEM, was there any provision for accrued unpaid benefits for cost of living?

A No, sir.

MR. BOBBE: Excuse me, I object to that as referring to the contract --

THE COURT: Wait, I didn't hear the first part of the question.

(Whereupon, the question was read by the reporter.)

THE COURT: Objection sustained.

MR. BOBBE: May I ask it be stricken, your Honor?

THE COURT: Strike it out.

The jury will disregard it.

BY MR. HUGHES:

Q Is there any provision in the accounts of LEM for accrued insurance benefits?

MR. BOBBE: Well, I object to that.

THE COURT: Sustained. The jury will disregard it.

Q I show you Exhibit B in evidence, Mr. Gibson. Mr. Lowell has testified that Exhibit B which is described as a business plan, was prepared at or about the time of the acquisition, that is, at or about July 3, 1968. I ask you when did Mr. Lowell give that document to you.

A December 27, 1967. He made the blueprint copies from an original while I was there.

MR. HUGHES: I have no further questions, your Honor.

MR. BOBBE: Well, in view of that statement, if it was delivered prior to the making of the contract, I must move to strike out the exhibit as having been merged in the written contract.

THE COURT: Let me have it, please.

Well, these more or less deal with the reasons for entering into the merger, is that correct?

THE WITNESS: Yes, sir, absolutely.

THE COURT: Sustained. Strike it out. I hold it is not material to the issues in this case, so it may be stricken from the record.

MR. HUGHES: I understand your Honor's ruling, but that contains information other than reasons for entering into the agreement, and contains information concerning the business and affairs of --

THE COURT: Ultimately they merged.

MR. HUGHES: Very well, your Honor has ruled.

THE COURT: I'll withdraw it from evidence. It may be stricken, and the jury will not have that as an exhibit.

*****

(Whereupon, Defendant's Exhibit B in evidence was expunged from the record.)

MR. BOBBE: Will your Honor excuse me a minute?

THE COURT: Surely.

MR. HUGHES: Your Honor, may I draw attention to the fact that there could be some confusion? I'm not pressing you to change your ruling, but that exhibit is to be distinguished from the Operating Plan which is another document prepared after the merger and which is Exhibit Q in evidence.

THE COURT: I haven't referred to that at all, just this exhibit, which is no longer in evidence.

MR. HUGHES: I understand, your Honor.

CROSS EXAMINATION

BY MR. BOBBE:

Q Now Mr. Gibson, I understood you to say that you never received any operating statements from Mr. Lowell.

THE COURT: He said for a year.

Q For which year did you not receive any operating statements?

A Now by operating statements I'm talking about reports. We got financial reports every month.

Q Yes?

A But the operating statements, the statement of the condition of the business and the reasons for not getting this and that or the other thing, there was a period of about a year --

Q Which year?

A '70 to '71, I believe.

Q I show you this paper dated May 20, 1971 and ask you if that wasn't an operating statement that you received at or about that date.

A Yes, this is five months into '71. I said '70 to '71.

Q I show you one for the month of the 15th of November, dated the 15th of November, 1971.

A That's still later, Mr. Bobbe. I said '70 to '71, some fourteen months.

MR. BOBBE: I offer these two as one exhibit. I offer them in evidence.

MR. HUGHES: Well, are they offered for the purpose of impeaching the witness? If they are, I object to them.

THE COURT: Sustained.

MR. BOBBE: No, no, not for that purpose, sir, no.

THE COURT: All right.

MR. HUGHES: Well, if they are not offered for that purpose, but offered for showing that there were reports at those later dates, I have no objection.

THE COURT: Let them be marked as reports made on those later dates, for the year 1970 to'71.

MR. BOBBE: Yes.

(Document above referred to was received and marked as Plaintiff's Exhibit 29 in evidence as of this date.)

BY MR. BOBBE:

Q Did you ever make any communication with Mr. Lowell when you say you didn't receive any reports?

A Yes, I made verbal communication with Mr. Lowell, yes.

Q Anything in writing?

A I can't recall whether I did or not.

MR. BOBBE: Well now, I would like to read a part of this exhibit to the jury, if I may:

"May 20, 1971. Mr. John H. Batten."

This is on the letterhead of LEM Instrument Corporation.

"Mr. John H. Batten, R. T. Howell, Mr. D. E. Beaton, Mr. W. B. Gibson:

"Subject: LEM status report.

"Preliminary to our next Board meeting on 2 June, 1971 the following report is submitted for your consideration.

"Sales: Sales to date have not reached

the level projected at this time last year. Many of our prospects at that time have simply slowed down their development programs and therefore have postponed purchases. They do, however, in most cases, remain good prospects. Some, such as Kaiser Aluminum, Western Electric, Buttler Manufacturing, Grottner's Machine (phonetic) PAR Systems, Idaho Nuclear Corp., and Barkley Dexter, have ordered encoder display systems for evaluation, and most certainly will repeat orders as their programs begin moving faster."

Then there is a paragraph listing quotations.

"In addition to the earlier quotes referred to above we have a considerable number of new ones with extremely good dollar value and potential for repeat business."

And then there is listed a group of people who have asked for quotes.

MR. HUGHES: What was that exhibit number?

MR. BOBBE: 29.

MR. HUGHES: Thank you. May I see it, please?

BY MR. BOBBE:

Q You had quarterly meetings with the Board of Directors, did you not, Mr. Gibson?

A Yes.

Q Did you ever ask for any reports at the meetings of the Board of Directors?

A Oh, yes.

Q What was said?

A Illness pleaded on occasion, other more pressing business, but never -- but we never got the results, the reports.

Q Were you told what the results were at those meetings?

A Oh, yes. He gave us reports.

Q So you had reports at those meetings?

A Once very three months.

Q I beg your pardon?

A Once every three months.

Q The reports brought you up to date though, did they not?

A On a rather slow basis, yes, sir.

Q Well, you testified that you had doubts about the success of this business due to, in the first place, the Samuel incident, is that correct?

A Yes, sir.

Q Did you express those doubts in any communication to Mr. Lowell?

A I don't know that I did in writing.

Q Did you say to him that he shouldn't have fired Mr. Samuel?

A I sure did.

Q You sure did?

A Yes, sir.

Q Don't you know that Mr. Samuel was dismissed because of his abusive language and threatening action to Mr. Lowell?

A That was the reason given.

MR. HUGHES: I object to that.

THE COURT: Sustained as to form.

Q I ask you if you didn't write this letter to the New York State department of Labor, division of Employment.

A No, I did not.

Q Isn't that your handwriting?

A Yes, sir.

Q Do you mean to say although it's in your handwriting you didn't write it?

A That's a memo written to myself.

Q What purpose did you write that memo to yourself for?

A To keep records of what --the form of a letter that would be written to the New York State department of Employment.

Did you write such a letter?

A No, sir. I did not.

Q But you kept that memo for your own information, is that correct?

A Yes, sir.

MR. BOBBE: I offer it in evidence.

MR. HUGHES: May I see it, please?

I object to it as irrelevant, incompetent and immaterial, your Honor.

THE COURT: Let me see it.

MR. HUGHES: It's certainly improper cross examination, your Honor.

THE COURT: I think it has a bearing on whether the Plaintiff here unduly discharged Mr. Samuel. Objection overruled. Let it be

marked.

*****

(Document above referred to was marked Plaintiff's Exhibit 30 in evidence as of this date.)

MR. BOBBE: I would like to read that to the jury, if I may?

THE COURT: Yes.

(Whereupon, Mr. Bobbe read Plaintiff's Exhibit 30 in evidence to the jury.)

BY MR. BOBBE:

Q I ask you, did you believe the truth of the statement that you made in this letter that Mr. Samuel was dismissed for cause as a result of abusive language and threatening action?

MR. HUGHES: I object to that as improper cross examination.

THE COURT: You are making him your own witness. I'll allow it on that basis, but you are bound by his answer. This is something new, not brought out on direct.

MR. BOBBE: Yes.

THE COURT: I'm not stopping you, you can make your own choice.

MR. BOBBE: Question withdrawn.

BY MR. BOBBE:

Q You did not write any letter to Mr. Lowell of any kind complaining about his having dismissed Mr. Samuel, did you?

MR. HUGHES: Your Honor, with that jackhammer outside it makes it awfully hard to hear. May I hear the question again?

(Whereupon, the last question was read by the reporter.)

A I don't really recall any letter, and I don't think I wrote a letter, but there was certainly no misunderstanding on the part of Mr. Lowell.

THE COURT: Did you write a letter?

THE WITNESS: I did not as far as I know.

Q Now, you also referred to the dismissal of Mr. Everett, that that gave you some doubts about the continuation of the company, is that right?

A No doubt, that convinced me.

Q That convinced you?

A Yes, sir.

Q And the result was that you were present at the

Board meeting and you voted to dismiss Mr. Everett yourself, did you not?

A I did.

Q You had asked Mr. Everett to continue his work on August 11 when he called you up and told him to come back the following Monday, is that right?

A I did.

Q And he did continue?

A Yes, sir.

Q When you got there -- he didn't get to the place of business until September 27th --

MR. HUGHES: Again, your Honor, I object as not part of cross examination. I didn't go into this subject.

THE COURT: You are making him your own witness on that.

MR. BOBBE: No, he testified it was on account of the dismissal --

THE COURT: Of the employee, that's correct. Yes, I'll allow it then.

Q I'm only asking you that when you arrived there on September 27th, did you attempt to find out then whether or not the dismissal was justified or otherwise?

A Yes.

Q How did you find out? What did you do?

A By talking individually with Frank and with Bob Everett.

Q What was your conversation with Frank on that day?

A Just trying to find out his real reasons for firing him.

Q What were your conversations? What did he tell you, and what did you ask him?

A Oh, he gave me some story about --

Q No, can't you remember what he said to you?

A Not specifically, but in general yes.

Q Can you remember what you said to him?

A Yes.

Q What did you say to him?

A In general I said --

THE COURT: In substance, if you can't remember the exact words. What did he say to you in substance, and what did you say to him in substance?

A At Frank Lowell's instance he told me that Everett was not performing his job and hadn't been for about a

year, and that finally he absolutely refused to mail out some literature and that he felt that that was sufficient grounds for discharging him.

I told him I didn't think it was, and I wanted to hear Everett's side of the story.

Q Do you remember being examined under oath on an examination before trial when I asked you --

MR. HUGHES: Page, please?

MR. BOBBE: Page 25. The date of the examination was August 28, 1973.

MR. HUGHES: Would you wait just a moment, please? Page 28?

MR. BOBBE: 25.

Q Do you remember my asking you this question?

"Question: When you delivered this letter," meaning the letter of October 9th, "Of discharge to Mr. Lowell, and to Mr. Everett, was there anything said by you at the time that you delievered the letter?

"Answer: Well, there was a conversation. Precisely what it was on I can't answer that."

Do you remember giving that answer to that question?

A But I didn't know that that was the question

asked me earlier. Would you repeat the date on the one that you asked me for earlier? I thought you said September 27th. You are talking of October 9th now.

Q That's right. On October 9th, did you have any conversations with Mr. Lowell?

A Very little.

Q Or with Mr. Everett?

A Very little.

Q On September the 27th you say that you then asked him what the reason was, but that you knew that Mr. Everett was remaining there on September 27th?

A At my direction.

Q You left with them a letter proposing that they purchase the assets of the corporation for $155,000, and they would apply one year's salary to each of them against that purchase, is that correct?

A That's correct.

Q Wasn't that your sole purpose of your visit on September 27th?

MR. HUGHES: Again, your Honor, I object to all this.

THE COURT: No, I'll allow it. Overruled.

Q Wasn't that the sole purpose of your visit on September 27?

A No, sir, it was not.

Q Well, you made no effort then to discharge either one of them, did you?

A No.

Q Had you had any interviews with Mr. Everett apart from Mr. Lowell in New York in which you discussed Mr. Lowell with Mr. Everett?

A Yes.

Q Will you tell us what that was and when that was?

MR. HUGHES: Your Honor, can I have a continuing objection on all this, and then I won't be up and down.

THE COURT: Well, this is new matter now, isn't it?

MR. BOBBE: No, I don't believe it is, sir.

THE COURT: I'll allow it. Overruled.

A I recall --

MR. HUGHES: Can we fix the time?

THE WITNESS: That's what I'm trying

to figure, the date.

Q Could I help you by saying it was March 3, 1972?

A That could well be.

Q And you came to New York for that purpose, to tape ~~erase~~ the conversation with Mr. Everett, is that correct?

A That's right.

Q You discussed with him, Mr. Lowell, and Mr. Lowell's activities in the company, is that right?

A Well, relating to other parts of the business, yes.

Q When you came to New York for that purpose, you brought with you a tape recorder, didn't you?

A That's correct. Yes, sir.

Q And you taped that entire conversation, didn't you?

A Yes, sir.

Q Then what did you do with the tape after you got it?

A Rerecorded some music on it.

Q And you made a transcription of it, didn't you?

A I sure did, yes, sir.

Q And you handed it to Twin Disc lawyers, didn't you?

A No, I put it in my files.

Q You put it in your files?

A Yes.

Q And Mr. Everett knew you were taping the conversation, is that correct?

A It was taken with his permission, yes.

Q Was this done secretly so that Mr. Lowell wouldn't know anything about it?

MR. HUGHES: I object to the form of that question.

THE COURT: Sustained. Did Lowell know that this was being done?

THE WITNESS: No, sir.

Q Did you tell Mr. Lowell any time afterwards that you had heard this report from Mr. Everett?

A Not in whole or directly, no.

Q Well, didn't you tell him that you had had a private conversation with him?

A No, I did not.

Q You also had conversations over the long distance telephone that you taped, did you not, both with Mr. Everett and Mr. Lowell?

A Yes, sir.

Q Did you tell them that you were taping the conversations?

A At that time, no, sir.

Q Did you know that that was a violation of the law?

A Not when you don't use it.

Q I beg your pardon?

A Not when you don't use it. I have done that with customers for years.

MR. HUGHES: Well, I object to this, your Honor.

THE COURT: Well, he asked him whether he knew whether it's a violation of the law and he has answered it. Overruled.

Q You had given no previous ~~information~~ intimation to these gentlemen that their conduct was such as to justify, or to make it likely that they would be discharged, had you?

A I didn't use the word discharge, no.

Q What words did you use?

A I told them that it was a most unsatisfactory operation, primarily to Mr. Lowell.

Q What did you tell Mr. Lowell and when?

A Well, on numerous occasions we told Mr. Lowell

he was not coming up to his expectations, or ours.

Q That's what you told him, isn't it?

A Yes, sir.

Q That the sales weren't as high as expected?

A That's correct.

Q Didn't you know that the projections of sales was merely a target which they were to try to reach in order to get incentive pay?

A Any sales projection or forecast is based on your best estimate of what the market is and your portion of what you get from that market.

MR. BOBBE: I move to strike out the answer as not responsive.

THE COURT: I think it is. Overruled.

Q When you say that any sales projection is a target, you wouldn't hold it against anyone if the target was not reached, would you?

A Within reason.

Q Well now, this exhibit that you introduced this morning contained a projection of sales which was prepared between you and Mr. Lowell according to your testimony.

A I was present while it was being prepared, yes.

Q Did you make any comments about it?

A I had to rely on Mr. Lowell's so-called knowledge of the market.

Q Well you knew what it was too, didn't you?

A Not in detail as he did.

Q You knew what the market potential was, didn't you?

A I sure did.

Q Didn't you think that anyone that would make a prediction as to the target being accomplished would be a fool?

A I beg your pardon? Would you repeat that?

Q Didn't you think that anyone who would make a projection of sales and consider that that was an accurate forecast would be a fool to make such a promise?

A You really want me to answer that?

Q Yes.

A Yes.

Q So you didn't think that that was in any sense a prediction which, if not fulfilled, would be a cause for a discharge, did you?

A We don't like to keep fools on our payroll.

Q I beg your pardon?

A We don't like to keep fools on our payroll.

Q You don't like to keep what --

THE COURT: Fools.

A Fools, f - o - o - l - s.

Q Oh, I see.

Did you discharge Mr. Lowell because he was a fool?

A I didn't say that?

THE COURT: Well, is it true that in making projections in this or any business there must be some reasonable relationship between the amount projected and what profit or what sales and profits are expected?

In that market.

A Absolutely.

Q You knew by the end of June, 1972 that the projection for the year ending June 30, 1972 had not been reached, didn't you?

A Oh, yes.

Q Then didn't you write a letter to Mr. Lowell on July 24, 1972 -- I believe it's in evidence.

MR. BOBBE: Do you have that number?

MR. HUGHES: What was that date, please?

MR. BOBBE: July 24, '72.

MR. HUGHES: Did you put it in or did we?

MR. BOBBE: We did.

MR. KHEEL: Exhibit 15.

BY MR. BOBBE:

Q You remember Mr. Gibson, writing this letter on July 24, 1972, do you not?

A Yes, I do.

Q You knew when you received this letter that the sales had not been -- the sales projected had not been reached?

A I mailed that letter.

Q I say, you knew by the time the letter was mailed by you, and written by you, that the projected sales for this fiscal year had not been reached as yet, didn't you?

A That's correct.

Q Yet you were deciding upon the fiscal year program for the ensuing year at the time you wrote this letter, weren't you?

A That's right, yes.

Q At the conclusion of the letter you said, "Good luck, Frank. Maybe, this is the year we will get our breaks."

Do you remember that?

A Yes, sir.

Q So that at that time you didn't think that there was any cause for discharge because the projected sales by the end of June 30, 1972 had not been reached, isn't that true?

A I was still hoping I could get next to Frank and get him going.

Q I beg your pardon?

A I was still hoping I could get next to Frank and get him going.

Q You were still optimistic about the business at that time, were you not?

A Pretty much so.

Q In fact, didn't you tell Mr. Batten when the meeting was held discharging Mr. Lowell that you would be willing to come out of retirement and work with Mr. Lowell in order to carry on the business?

A I told Mr. Batten I would be willing to come out of retirement and run LEM, but I could never had said I would work with Frank.

Q Well now, do you remember being questioned on that subject on your examination before trial?

A Yes, I do.

MR. HUGHES: Page, please?

MR. BOBBE: 67.

Q Do you remember at the time of this examination, which was August 28, 1973 --

A Yes?

Q (Continuing) -- that you were asked this question:

"Question: When you delivered the letter of October 9th, do you remember saying to Mr. Lowell in words or in substance that you told Mr. Batten that you would like to come out of retirement and work with Mr. Lowell, and see if you couldn't put the company on a sound footing?

"Answer: I don't know that I said work with Mr. Lowell. I expressed an opinion that LEM was worth saving. I still feel that way."

Do you remember giving that answer?

A Yes, sir. I do.

Q That answer was correct, I assume?

A It was corrected, I believe.

Q Well, no --

MR. HUGHES: He said it was corrected.

THE WITNESS: That was corrected,

yes.

Q I think you are mistaken, Mr. Gibson. That answer that you just gave, "I don't know that I said worked with Mr. Lowell. I expressed an opinion that LEM was worth saving. I still feel that way."

Was that the answer?

A That answer is correct, yes, sir.

Q The next question is, "Question: Did you tell Mr. Lowell that you had made that offer to Mr. Batten, to come out of retirement?

"Answer: I may have, because I felt very strongly about the LEM products and its market."

Was that answer true?

A Yes, sir.

Q You did think very strongly about the LEM products?

THE COURT: He said that several times.

Q All right. The next question:

"Question: And you thought you could do that, working with Mr. Lowell, isn't that so?

"Answer: I could have said this to Mr. Lowell."

Do you remember giving that answer at that time?

A Yes, I do.

Q Was that true?

A No, sir. The answer that you have there is what I said at that interrogation, yes.

Q You knew you were under oath at that time.

MR. HUGHES: Your Honor, there is a correction to the answer, as the law permits.

MR. BOBBE: I'll come to that.

THE COURT: Show him the correction that was made.

Q You discussed this deposition with someone in Racine, did you not, or Milwaukee?

A No, I got that down in New Mexico.

Q New Mexico?

A Yes, all by myself.

Q Then after you got the transcript you made a correction which I would like to show you.

A Yes, sir.

Q And in that answer which you had originally given you corrected it to say, "I could have said that I was willing to come out of retirement, but I know I did not

say I could work with Mr. Lowell."

A That's right.

Q Is the final answer, the corrected answer, your testimony?

A Yes, sir.

Q I see.

Now, was your recollection improved in any way after you gave your original testimony and the time that you signed this deposition?

A No, my feeling has been the same.

Q What?

A My feeling has been the same all the way.

THE COURT: No, your recollection of what took place.

THE WITNESS: Oh, the recollection of what took place is clear, yes, sir.

Q You verified this on September 25, 1973. I ask you whether you refreshed your recollection in any way after you gave your testimony?

THE COURT: The original?

MR. BOBBE: The original testimony.

A Did I refresh it in what manner?

Q Did you refresh it in any way so as to cause

you to change it?

THE COURT: Change it in the sense that you said you couldn't work with Lowell.

THE WITNESS: There was no refreshing there, sir. I just can't understand how I made the answer that I gave in the original testimony, because I know how I felt all along.

Q Well now, did you feel that you could go ahead and run this business without Mr. Lowell?

A Yes, sir.

Q Why didn't you try it?

A We may --

MR. HUGHES: Your Honor, I object to that.

THE COURT: Sustained. It's argumentative.

Q You testified that Mr. Lowell didn't make any direct calls on customers, is that right?

A I didn't testify that he didn't make any. He made a very limited number.

Q How do you know that?

A Through the vouchers and his books plus personal knowledge.

Q Did you examine the vouchers?

A Yes.

Q Do you have them here?

A No.

Q Was it your -- was it part of your duties to examine vouchers?

A After this action started, yes. I had to get confirmation of my personal knowledge of his traveling.

Q I ask you whether you ever wrote him any letter directing him, or suggesting to him that he make personal calls?

A Well, I even outlined schedules for him.

Q I beg your pardon?

A I even outlined schedules for him.

Q Will you produce any such schedules?

A You have copies of them, I believe.

Q Can you tell us when you prepared such a schedule?

A On several occasions.

Q Was it in writing?

A Yes, sir.

Q Will you produce a copy of such a schedule?

A I believe one of them --

MR. HUGHES: Will you wait just a minute?

MR. BOBBE: Sure.

MR. HUGHES: (Submitting document to Mr. Bobbe.)

MR. BOBBE: Counsel has produced a letter dated April 4, 1969.

MR. HUGHES: Counsel for the defendant, your Honor.

MR. BOBBE: Counsel to the defendant, of course.

BY MR. BOBBE:

Q I ask you if this is the letter that you referred to.

A Well, this is one of several, and the last one is July 24th that you have as an exhibit right here (Indicating).

Q 15?

A That one right on top, the third and fourth paragraphs, page 2.

MR. BOBBE: May I first have this new document offered in evidence?

MR. HUGHES: Is that the one I just

produced?

MR. BOBBE: Yes.

MR. HUGHES: No objection.

***** (Document above referred to was marked Plaintiff's Exhibit 31 in evidence as of this date.)

BY MR. BOBBE:

Q Isn't it a fact that you were making the suggestions contained in this letter of April 4, 1969, purely as personal suggestions by you?

A As Chairman of the Board to the president of the company.

Q Well, do you remember making the statement, "Frank, believe me when I say that these suggestions are personally mine, in a sincere effort to help you, my sales background tells me you just can't sell a technical product like yours from the home office or a catalog."

Do you remember that phrase in the letter?

A Very definitely. In my capacity as liaison between LEM and Twin Disc and the handling of a very difficult person.

Q When you said this was merely a personal suggestion in a sincere effort to help him, you didn't con-

sider him in April of 1969 as a very difficult person, did you?

A I sure did.

Q You did?

A Yes, sir.

Q Would you say that that was a difficulty for you or difficulty in the running of the business?

A Well, difficulty for both of us.

Q Did you make any intimation at any time that he was being difficult in any letter that you wrote to him?

A I tried to avoid any way of offending Frank because I couldn't get better performance out of him even if I was irritating him all the time. I had a professional challenge to get next to that guy, and I failed for four years.

Q Mr. Gibson, were you still optimistic about the products and about the possibilities of the company at the time you discharged him?

A The product, yes.

Q And the possibilities of the company?

A If it was managed right, yes.

Q Did you consider yourself able to manage it?

A I could get people to run it.

Q Isn't it a fact that the only reasons that you

voted for the discharge of the members of the Board were the fact that in your opinion he had not made sufficient calls on customers and had not obtained sales representatives, isn't that true?

A No, that's not wholly true. It's the manner in which he handled all these things.

Q Do you remember being interrogated on that subject when you were examined before trial?

A Yes, sir.

MR. HUGHES: Page, please.

MR. BOBBE: Page 27 and 28.

Q "Question: Did you know yourself what was the cause for the discharge?

"Answer: Basically.

"Question: Well, what was it as you knew it at that time?

"Mr. Kheel: You were one of the directors and you voted for his discharge?

"The Witness: Yes.

"Answer: I can tell you what my thoughts were when I voted for the discharge, that repeated requests upon Frank to get out into the field to do some selling were ignored. Repeated requests to get manufacturer's representa-

tives were completely ignored until the very end, and when a director or Chairman of the Board instructs the president, to me that is a demand, not just a gentleman's request, and they were never complied with.

"Question: And that was the reason why you voted for his discharge?

"Answer: That is why I voted for his discharge, yes."

Was that testimony true?

A That's correct, yes.

Q So those were the two reasons that you voted for the discharge, weren't they?

A Not totally, no. I think that's answered later on in there.

Q I beg your pardon?

A That's answered later on in there.

Q You say that was answered later on?

A I believe so.

MR. BOBBE: Page 31.

Q "Question: Let me see if I recall correctly. You say the reason that you had in your own mind was his failure to have personal contact with customers and a failure to have sales representatives, is that right?

"Answer: That's right.

"Question: Those were the two reasons that you had?

"Answer: A complete ignoring of requests and instructions from Twin Disc."

Was that answer true?

A I think there is still more there someplace.

Q "Question: You knew that he had been making efforts to get sales representatives, did you not?"

MR. HUGHES: What page is that?

MR. BOBBE: The same page, next question.

Q "Answer: I had reports to that effect, yes.

"Question: Have you any reason to doubt those reports?

"Answer: The aggressiveness in which they were made I doubt sincerely, yes."

So that those were the two reasons you had, were they not?

A Not totally, not totally. I think there is much more in there that isn't being brought out.

Q Maybe, your counsel can bring it out.

Isn't it a fact that the discharge on October

9th was a completely new thing that came to these two gentlemen out of the blue?

A To them out of the blue, yes, sir.

Q There was no previous intimation that anything they were doing or not doing would be a cause for discharge?

A I don't know that the word discharge was tied in with any recommendations that were given to them.

MR. BOBBE: That's all.

MR. HUGHES: Would you bear with me for a moment, your Honor?

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. HUGHES:

Q Mr. Gibson, I show you a letter dated January 20, ~~1952~~ 1952, addressed to Mr. Lowell, and I ask you whether you wrote that letter to Mr. Lowell.

A Yes, I wrote this letter.

MR. HUGHES: I offer it in evidence, your Honor.

MR. BOBBE: No objection.

*****

(Letter referred to was marked Defendant's Exhibit WW in evidence as of this date.)

MR. HUGHES: May I read this, your

Honor?

THE COURT: Yes.

(Whereupon, Mr. Hughes read Defendant's Exhibit WW in evidence to the jury.)

BY MR. HUGHES:

Q Mr. Gibson, you were asked about certain questions and answers which you gave on a deposition on August 28th, and the last question that was put to you was, "Have you any reason to doubt those reports?

"Answer: The aggressiveness in which they were made. I doubt sincerely, yes."

Then you were asked this question, and did you give this answer?

MR. BOBBE: What page is that, please?

MR. HUGHES: Page 31.

Q "Question: What you are saying is that he was unsuccessful in getting sales representatives up to July and August of 1972?

"Answer: Yes, and there were a number of very good representatives presented to him, and he took no action on it."

Did you so testify at that time?

A Yes, sir.

Q Further on you were asked this question --

MR. BOBBE: What page?

MR. HUGHES: At page 47 of the transcript.

Q "Question: You have stated as I say just two reasons. I ask you if there are any other reasons besides those two which you have mentioned?

"Answer: They are the primary reasons.

"Question: Are there any others that are not primary reasons?

"Answer: This reminds me --"

MR. BOBBE: Would you please read Mr. Kheel's remarks, please?

MR. HUGHES: I would be glad to, all right.

Q So with the question, "Are there any others that are not the primary reasons?" the transcript shows that Mr. Kheel said, "Could you show Mr. Gibson his affidavit please. He may have stated some other reasons in the affidavit.

"Mr. B e: Yes, he can look at his affidavit (handing)."

And the question having been, "Are there any

others that are not the primary reasons?

"Answer: This reminds me of one, yes. That is, his relations with employees."

Were you asked those questions, and did you give those answers?

A Yes, sir.

MR. BOBBE: The next question and answer please?

MR. HUGHES: "Question: What about that? What was that?

"Answer: And then there is this failure to report."

Q Did you give that answer to that question?

A Yes, sir.

MR. HUGHES: That's all, your Honor.

MR. BOBBE: That's all.

THE COURT: Step down, sir.

(Whereupon, the witness was excused by the Court.)

MR. HUGHES: The defendant rests, your Honor.

THE COURT: All right.

MR. HUGHES: And having rested, I

renew the motions previously made, and on the same grounds.

THE COURT: The Court makes the same ruling previously made.

MR. BOBBE: I would have a motion to make. Perhaps your Honor would like to discuss it in the absence of the jury?

THE COURT: Well, all right.

Members of the jury, don't discuss the case, and form no opinion of it at this time. You may go to your jury room.

(whereupon, the jury was excused, and the following occurred in the absence of the jury:)

THE COURT: For the record, Mr. Hughes, I suggest that you make your motions in the regular way rather than by reference.

MR. HUGHES: Very good. Having rested, your Honor, I respectfully move to dismiss the two causes of action set forth in the complaint upon the ground that the Plaintiff has failed to make a prima facie case, and on the further ground that upon the entire case it appears that

the Plaintiff has failed to adduce a prima facie case, and the defendants have adduced sufficient evidence to show that there was justification for the Plaintiff's discharge.

THE COURT: Motion denied.

MR. HUGHES: Your Honor, may I add for the record a motion for a directed verdict for the defendant on the same grounds?

THE COURT: Motion denied.

MR. BOBBE: Your Honor, I move for a directed verdict on the second cause of action as to the cost of living increase because there has been no evidence to contradict this claim. In fact, there has been no evidence to show any waiver or any release. In fact, there is no waiver or release pleaded in this cause of action.

Now, those were services already rendered and completed so that if the cost of living benefit was not dismissed or released, then even though a discharge may have been justified, if it was, that would have no effect on earnings that had already accrued, and there-

fore, I feel that we are entitled to a directed verdict at least as to the amount of $18,220 on that cause of action.

THE COURT: That's if he didn't waive it.

MR. BOBBE: I beg your pardon?

THE COURT: That's if he didn't waive it. I think that is a fact issue in the case, and I deny your motion.

MR. BOBBE: Under the cases, your Honor, as you know there can be no waiver of an actual accrued amount due under a contract.

THE COURT: There can never be a waiver.

MR. BOBBE: I say, unless there is an expressed waiver or a release.

THE COURT: Either by conduct or otherwise.

MR. BOBBE: I take exception to your Honor's ruling on that.

I also move to strike so much of the Defendant's defense --

THE COURT: That has already been

passed on by another Judge.

MR. BOBBE: I beg your pardon?

THE COURT: That has already been passed upon.

MR. BOBBE: Well, not after the -- that was on the pleadings.

THE COURT: Yes.

MR. BOBBE: But now I'm moving on the ground that there is no evidence to support, in the first place, to achieve the level of performance anticipated for LEM in the operations plans presented at the very beginning of the organization. How is that a basis as a defense for a discharge when the operation plans were only for the first year of operation, for 1968? They were not achieved and they were not a promise, but they were merely set forth in the contract as a target which if reached would in the third or fifth year have entitled the Plaintiff to additional compensation. However, there was no basis for construing the contract to the effect that that would constitute a grounds for a discharge, and if it was, then it

was condoned when there was no action taken at the end of the first year.

THE COURT: Motion denied.

MR. BOBBE: To the same extent, or rather even more important, to achieve any profits for LEM -- where was there any contractual obligation to achieve any profits?

THE COURT: All of these defenses must be considered in light of the totality of the evidence here which the defendant at least claims that with the results, these losses, and these projections in and of themselves certainly are not a breach, but when taken together, as I understand the defendant's defense here, when all these things happened, the projections were not achieved, and the losses did result due to the fact that the Plaintiff failed to faithfully and diligently perform his duties, and failed to exert his best efforts for the company -- that's an issue in the case.

MR. BOBBE: Sir, there is no defense that he failed to perform diligently and faith-

fully and put forth his best efforts. There is no such plea, and that must be pleaded.

THE COURT: You have to prove that you did it. That's part of your case. They deny it. That's an issue.

MR. BOBBE: It must be an affirmative pleading.

THE COURT: They have also affirmatively pleaded it.

MR. BOBBE: I beg your pardon?

THE COURT: They say there is a breach of contract, according to their contention, and that justified them in discharging him. Now, if he breached his contract as a fact, they had a right to discharge him.

Some of the evidence points at least as to what he failed to do after instructed to do certain things, such as failure to give reports. I'm not saying that those things are true, but they raise issues that I have to submit to the jury.

MR. BOBBE: As to the failure to retain manufacturer's representatives, they were

retained, so there is no evidence to the contrary. How can that be?

THE COURT: As I recall it, some of them were retained, they came and went somebody testified.

MR. BOBBE: No, there were two of them still retained -- yes, in the beginning, and in the end there were two of them still retained.

THE COURT: It has a bearing on his ability to more or less manage, by obtaining representatives to sell the product. I'm not saying he failed to do it, and I'm not saying that he did it. That's the question of fact.

MR. BOBBE: But I say there is no evidence. How can it be a question of fact?

THE COURT: I disagree with you. I think there is enough evidence in the case on that issue to go to the jury.

MR. BOBBE: And going on to the question of accounts payable, there is no evidence to that effect.

THE COURT: I don't recall any. What do you say to that?

MR. HUGHES: As to that I concede, your Honor.

THE COURT: That is stricken.

MR. BOBBE: That is number 6.

Number 7, to report to his superiors. Who were his superiors?

THE COURT: He didn't know?

MR. BOBBE: I beg your pardon?

THE COURT: Didn't he know?

MR. BOBBE: No. He was the head of the company, and he was entitled to -- he was acting as --

THE COURT: In the posture of the relationship between Twin Disc and LEM certainly there was somebody. Twin Disc having guaranteed this contract, certainly he was obliged to make reports, wasn't he?

MR. BOBBE: Well, he did, but the evidence is without a doubt that he made reports. Mr. Gibson just now on the stand said he did

THE COURT: He said he didn't make some for a year, for one year he didn't make

them. I'm not saying that that constitutes as a matter of law a cause to discharge him, but I think it's enough to go to the jury.

MR. BOBBE: But he said reports were made at the director's meetings.

THE COURT: That may be so. Every three months he said.

MR. BOBBE: Now, the other three, the remaining causes, I respectfully submit that in spite of Judge Berman's decision, they are not proper grounds for a discharge.

THE COURT: To develop markets, to deal with personnel harmoniously, to deal with customers harmoniously? To provide for leadership?

Your motion is denied.

MR. BOBBE: All right.

THE COURT: We'll take a recess.

(Whereupon, a recess was declared.)

(After the recess the jury returned to the Courtroom and the following occurred:)

MR. BOBBE: I call Mr. Lowell in rebuttal, please.

FRANK LOWELL, the Plaintiff, having been previously duly sworn, resumed the stand to testify in rebuttal, and testified as follows:

DIRECT EXAMINATION

BY MR. BOBBE:

Q Mr. Lowell, when Mr. Everett was examined as a witness he testified that you made remarks to Mr. Samuel to the effect, "Are you making a career out of this?"

Is that true?

A That is not true.

Q Did you consider Mr. Samuel a hard worker?

A I considered Mr. Samuel a sincere and hard worker, yes.

Q When you had this talk with Mr. Everett that was overheard by Mr. Samuel, do you recall what was said by you to Mr. Everett?

A In substance I do, yes.

Q What was said?

A What I said to Mr. Everett?

Q Yes.

A Well, I asked him whether some work that I had asked Mr. Samuel to do had been completed, and the work involved making some modifications of some drawings and

instructions that were to be used by Mr. Everett in placing a purchase order for some parts that we needed for ~~our~~ our products at LEM. So, the sequence would have been for Samuel to prepare the information, give it to Everett, for Everett to place the purchase orders.

When I inquired of Everett he said he had not gotten the information from Samuel yet. So I reminded Mr. Everett that I had spoken to both him and Mr. Samuel on several occasions about the urgency of getting that particular matter done, and doing it before other things since we then would have to wait for our outside supplier to complete his work. And so, Mr. Everett then said to me, "Well, you know Joe Samuel, Frank. Unless you keep after him he won't get things done."

I said, "Well, I have mentioned this several times though, and I think it's most important, and we should go and find out why Joe Samuel has not done that particular job and has decided to do something else."

Q Is that all you said to Mr. Everett that was overheard by Mr. Samuel at that time?

A Well, that's all I said on that subject, yes.

Q Now then, did Mr. Samuel then talk to you about it, or say something to you about it?

A Well, as I recall at that point Mr. Everett and I went out to where Mr. Samuel was working in the adjoining room, to inquire of him what the situation in this matter was.

As we entered the area, Mr. Samuelwas already on his feet and evidently agitated, and he immediately started to shout at me, and that was when he had this saw in his hand.

Q What kind of saw?

A It was a small hand saw, a metal cutting saw.

I asked Mr. Samuel why he hadn't made those -- I believe there were additions to drawings for these parts, and he became -- he became almost unintelligible in his answers. He told me that he was sick and tired of being told what to do and I said, "But Joe, you know how important it is that we get this done," and that's when he started to call me names and came towards me with the saw, and in fact threw the saw in my direction. It did not hit me; it hit the wall right behind me.

Q And at that time what did you say to him then?

A Well, of course, I was very upset by this, and I told Joe Samuel that he had behaved improperly, that he wasn't doing his job and that for using the kind of abusive language and threatening me the way that he did that he was fired and that he should pack up his things and leave.

Q Subsequently, or a few days later he came back to work, is that right?

A I believe it was three or four days later, yes.

Q Then a month after that he left you, is that right?

A A little over a month later he -- Bob Everett told me, in the middle of that week, that Joe Samuel was leaving at the end of that week, and I said, "Oh? I'm very much surprised." I thought Joe and I had patched it up, and I had no idea that he was going to leave, particularly since jobs that he was working on were far from completion. So, Bob Everett suggested that I talk with Joe Samuel directly about it.

I talked with Bob a little more about the situation and how Joe felt, and we agreed that on the following day, which I believe would have been a Friday, that we would talke with Joe together, but that in the interim Bob Everett would talk with Joe first.

Well, Friday morning Joe reported -- that is, Bob Everett reported to me that he had spoken with Joe and that Joe would come in later in the day, into my office, and that we would talk about it, but that Joe had told Bob that he was definitely leaving because he had plans to go into a

business of his own with his brother and a third man.

Later that day we did have that meeting in my office, Joe, Bob and I, and I asked Joe if he was leaving, and he said, yes, he was leaving because he had given his word to his brother and a third man. I believe the third man's name was Tuomey, and that they had begun to organize a business and that in fact the business would probably compete with LEM's business.

When I heard that I cautioned Joe. I told him that the work he had done at LEM on the encoders at least was the subject of various patent applications and that if he does leave and go in his own business he should be very weary about competing against LEM at least in those areas.

And he said, well, he didn't care about that, and furthermore, he was anxious to be in that business, that that was the business he felt he knew best at that time.

At that point, I tried repeatedly, four or five times, to convince Joe that his opportunities with LEM were as good as they had ever been or even better, that I felt no anger toward him for the way that he behaved. I reminded him of the fact that we had been friends for some years, close friends in many ways, that I thought he was erring in leaving, and he repeated he had given his word, he was going into

business, that they had made all the plans, that they had even arranged for some space in which to operate and that he was a man of his word, and he would not go back on his word.

Q Did he at that time say that under no circumstances he would work for you?

A He never said that to me.

Q Did he say it at any other time?

A No, sir. In fact, he has told me --

THE COURT: No, the answer is no. Never mind with a long dissertaion.

Q What happened to the work that you say was not finished when Mr. Samuel left?

A I undertook to do it myself, and, of course, I immediately started to look for Mr. Samuel's replacement by advertising the position as available in the local newspaper.

Q Then you later engaged a man by the name of Mr. Coruzzi, is that right?

A Yes, I did.

Q After he was with you for about six months, you discharged him?

A Yes, I did.

Q Did you ever hear any complaints from anyone connected with the Board of Directors of LEM, from anyone

connected with Twin Disc, saying that you did wrong in any way in discharging Mr. Coruzzi?

A I never heard any such complaint.

Q Mr. Everett has testified that you would come into work at about nine-thirty in the morning. Is that true?

A A total lie.

Q What was the usual time that you did come to work?

A It varied. If I was coming directly to the office, it was from eight a.m. to eight forty-five a.m.

Q He also testified that you had discharged him twice before. Is that true?

A Not true.

Q Did he ever tell you in words or substance that he thought you were crazy?

A Yes, he did.

Q When was that?

A I believe it was at the time that I gave him that letter of discharge which would have made it August 11th, 1972, is that correct?

Q Yes.

A And he did say it on one or two other occasions prior to that.

Q Did he ever complain to you about his nervous condition?

A Yes, he did.

MR. HUGHES: I object to that, your Honor.

THE COURT: I don't know what all this is about. I have given you latitude, but let's bring it to a close.

MR. BOBBE: All right.

THE WITNESS: I think that's an important point, your Honor.

THE COURT: Are you the lawyer or is your lawyer representing you? I have ruled on it.

THE WITNESS: Yes, sir.

THE COURT: Objection sustained.

BY MR. BOBBE:

Q When you discharged Mr. Samuel, did you do what you considered to be in the best interests of the company?

A Yes, I did.

Q When you discharged Mr. Everett, did you act in what you considered to be the best interests of the company?

A Yes, I did.

Q It has been testified here by Mr. Gibson that you made infrequent calls to customers, is that true?

A That's not true, no.

THE COURT: All right. Next question.

Q You obtained sales representatives in the summer of '72, August of '72, had you not?

A Yes, sir.

Q Had you received, in response to a circular sent to some of your customers, reports as to their satisfaction or otherwise with the business, and the work that you were doing?

A Yes.

THE COURT: Reports from whom?

MR. BOBBE: From customers.

THE COURT: Well, didn't you go over this on your direct? Didn't you go over what he did with customers, and what he tried to do with promoting the business of the corporation? We don't have to go over that again.

MR. BOBBE: All right, sir.

Q Mr. Gibson has testified that there was a lapse of a year in which you made no monthly reports to the

Board of Directors. Is that true?

A No, sir.

Q Do you have the reports that were rendered?

THE COURT: Other than financial.

MR. BOBBE: Other than financial reports.

Q Do you have them in your possession?

A For that period?

Q Yes.

A No, I have looked for them. I don't have them.

Q Is it your testimony that you did send such reports monthly to the Board of Directors?

A I would say nearly every month. I can't say with certainty it was every single month. There were months when I gave personal reports at directors' meetings.

THE COURT: Oral?

THE WITNESS: Oral and written at times, both, so I can't say for sure.

THE COURT: He's only talking about that one year, '70 to '71.

THE WITNESS: I did submit written reports. I cannot state with certainty I

sent one every single month.

Q When you sent the financial reports, how were they sent?

A Appended usually to my written report.

Q Was a financial report sent every month to the directors?

A Yes.

Q Did you hire Mr. Danhof?

A No, sir.

Q Who did?

A I don't know.

Q Were you consulted about hiring him?

A Not at all.

Q Was he put on the payroll of LEM?

A Never.

Q Do you know whose payroll he was on?

A I was told he was on Twin Disc's payroll.

Q Were you asked at any time by Mr. Batten as to whether you felt that Mr. Danhof was helping you in any way in sales?

A Yes.

Q What was your response?

A My response was that he was not helping LEM's

sales.

Q Was this in conversation with Mr. Batten?

A Yes, during a directors' meeting, a LEM Board of Directors' meeting.

Q What was his response?

A His response was that he spoke to Mr. Gibson and said, "We'll have to look into this."

Q Mr. Danhof testified that he never heard from you regarding his suggestion for sales representatives. Is that true?

A No, that's not true.

Q Did you get some suggestions from him regarding sales representatives?

A No, not in that way, Mr. Bobbe. I asked Mr. Danhof to interview sales representatives with whom I had had previous telephone or written contact, and they were located in parts of the country where I knew from Mr. Danhof he would be traveling, and I asked him if he would interview them on my behalf.

Q Mr. Danhof said that he had made suggestions to you for direct mail and you rejected those suggestions. Is that true?

A That is not true.

Q What did you do so far as direct mail is concerned?

A The suggestion as to direct mail came from our advertising agency, and, in fact, I made arrangements and we did send out 5,000, approximately, of our brochures as a direct mail.

Q He claimed that there was a firm represented by a Mr. Maddock in Maryland that was interested in building their own encoders and wanted to get some information from LEM. Do you recall that incident?

A Yes, I do.

Q Will you tell us what it was?

A Yes. A gentleman called at LEM and introduced himself without a calling card as representing a company that might be interested in our shaft encoders. I invited him into my office.

We talked about the technical details of our shaft encoder, and then he asked me if I would permit him to go through out shop to see how we manufacture our shaft encoders.

I told him I couldn't permit him to do that, that some of the things we did were considered proprietary, but I would certainly answer any questions that I thought were

reasonable.

He left, and shortly thereafter, a few days, I received a call from, I believe it was a Mr. Maddock, whom I had never met, and he told me over the telephone that he was interested in our shaft encoders, in knowing how we built them, and if I would answer certain questions for him.

He then asked me very particular questions about the kinds of materials we used and certain details which were the subject of our patent application. I had been cautioned by our patent attorney not to go into any great detail on the construction of the encoders until we knew where we stood with the patent, and so I was unable to answer the questions that this Mr. Maddock put to me, and I told him so.

I told him that some of the matters were considered proprietary, but I would certainly help him in every way possible in his application of our encoders.

Q Had you made every effort that you thought was feasible and practical to make sales of your products?

MR. HUGHES: Your Honor, I object to that.

THE COURT: It calls for a conclusion. Sustained.

MR. BOBBE: Your witness.

CROSS EXAMINATION

BY MR. HUGHES:

Q Mr. Lowell, going back to what I refer to as the Samuel incident, you testified before trial on that subject on April 4, 1973, do you remember that?

A Yes, sir.

Q In that testimony describing that incident --

MR. BOBBE: May I look over your shoulder?

MR. HUGHES: Surely.

Q During the course of that testimony, did you at any point in that testimony state in words or in substance that Mr. Samuel threw a hacksaw at you?

A I don't recall if I said it or not, sir.

Q You know that you didn't say it on that deposition, don't you?

A Well, I presume from your question, but I don't recall.

MR. BOBBE: I'll take your word for it, Mr. Hughes, if you say it's not in there.

MR. HUGHES: May we so stipulate to that?

MR. BOBBE: Certainly.

Q When you testified concerning that incident earlier in this trial you made no reference to the hacksaw, did you?

A I believe that's correct.

Q The first reference to a hacksaw being thrown was when your lawyer asked Mr. Everett if a hacksaw had been thrown and he said no, and then later asked Mr. Samuel if a hacksaw had been thrown, and he said no.

MR. BOBBE: Mr. Hughes, I must correct you. What I asked was, was anything thrown, and he said a pencil.

MR. HUGHES: All right. I'll accept that correction, but there is nothing about a hacksaw.

THE COURT: Wasn't there some reference in your questioning about a saw, Mr. Bobbe? I think there was.

MR. HUGHES: Yes, there was, but it wasn't a hacksaw, it was a saw at that point. It's a hacksaw now.

MR. BOBBE: Possibly, yes.

THE WITNESS: May I understand the question please?

BY MR. HUGHES:

Q I say, wasn't the first reference in this case at any time to a throwing of a saw when your counsel asked that question of Mr. Everett here at this trial yesterday?

A No, that is not correct.

Q When in the course of this litigation prior to that question yesterday did anybody say that a saw had been thrown at you?

A I testified as to that when I appeared before a hearing of the New York State Unemployment Service.

Q I'm talking about this action.

A Oh, I don't believe I -- well, I don't believe I mentioned it until today.

Q This was a very lively incident if I may describe it as that, is that correct?

A Well, I'm not sure if I understand what you mean, but certainly it was an excited situation, yes.

Q This was an excited situation, and this is one of the details which stands out in your mind, is that correct?

A Yes.

Q And you made no mention of it at any time during the taking of your deposition or at any point up until your testimony here on rebuttal, correct?

A There were no questions that permitted that answer.

Q You have a lawyer, right?

THE COURT: All right. That's all.

MR. HUGHES: I have no further questions.

THE COURT: Step down, sir.

(Whereupon, the witness was excused by the Court.)

MR. BOBBE: Plaintiff rests, your Honor.

THE COURT: I assume that both counsel renew the motions made at the end of the defendant's case with the same force and effect as if made at length at this time?

MR. BOBBE: Yes, sir.

MR. HUGHES: Yes, your Honor.

THE COURT: The Court makes the same rulings heretofore made on those motions.

All right, gentlemen, you may sum up.

(Mr. Hughes thereupon summed up to the jury in behalf of the defendant.)

(Mr. Bobbe summed up to the jury on

behalf of the Plaintiff.)

THE COURT: Gentlemen, it is now ten minutes after one. I usually charge the jury upon completion of summations, immediately upon their completion, but I don't want to keep everybody from lunch at this time.

So, gentlemen, we will recess for lunch at this time. Please return at two-ten.

Don't discuss the case during the luncheon period. Keep an open mind on everything that you have heard thus far.

(Whereupon, a luncheon recess was declared.)

AFTERNOON SESSION

(Roll call of jury.)

(The Court charged the jury as follows:)

THE COURT: Counsel for both sides, Mr. Foreman, madam, and gentlemen of the jury: At the completion of the summations by counsel for both parties to this litigation it now becomes my duty and my responsibility to charge the jury. That expression, members of the jury, simply means that the Court proceeds

to instruct the jury, and that is what I am about to do in this case at this time.

First, I shall give you some general instructions regarding our respective duties in this case, the duties of the lawyers, how you are to consider testimony, the witnesses, who has the burden of proof, and so forth, and then I will become more specific and direct my attention to these issues involved in the case itself as presented during this trial.

With respect to the duties of the lawyers in this case, I wish to point out that they were retained as counsel by their respective clients to use their best efforts in behalf of their clients, and to present the evidence they have in the case in support of their contentions and in the best light and for the best interests of their clients. I might say that in this case we have had two very competent lawyers, well regarded in the profession, and they have attempted to convince you, the Plaintiff on the one hand, that his client is right and should receive your verdict, and the defendant's

lawyer on the other hand has tried to convince you that the Plaintiff is not right, that the Defendant is right and that the Defendant is entitled to your verdict.

Let me point out that we are not trying the rights of the lawyers as competent as they may be, and as well prepared as they may be. We are trying the rights of the people they represent, the litigants in this case, the Plaintiff on the one hand and the Defendant on the other. So much for the lawyers.

Your duties in the case are separate and distinct from my duties in this case. As far as the Court is concerned, it is the Court's duty and responsibility to charge you on the law as I am doing now, and to make rulings during the course of the trial, to tell you how you are to consider the evidence in this case and to see that during the course of the trial that only evidence that is relevant, competent and material to the issues presented for trial are introduced. In this regard, you are not to infringe upon that duty which is

mine.

As I proceed to tell you what the law of this case is, under your oaths as jurors, you must accept that law and that law alone, and you are to apply that law to the facts in the case whether you agree with the statement of the law given to you by the Court or not. You are not to be influenced by what you have heard on television or radio about trial of cases. Those are entertainment; we are dealing with the real thing here, and you must accept, I repeat, the law that the Court gives you as the law of this case, and apply it to the facts as you find them to be.

During the trial there were occasions when objections were made by both lawyers, and I must say that this case has taken four days, but there weren't an inordinate amount of objections made. The trial went on orderly, but certain objections were made, and I had to make rulings on those objections. I say to you that I take full responsibility for every decision made on the introduction or the

admissibility of evidence. Some of the objections were sustained which means that you must disregard the question and the answer given, when I sustained an objection to that question or answer. You may not consider it as part of the evidence in this case. Other objections were overruled which meant that the evidence went before you, and you have a right to consider all of the evidence that was not excluded by a ruling of the Court in deciding the questions of fact in this case, and in ultimately deciding whether the Plaintiff should receive your verdict or whether the defendant should receive your verdict.

I caution you not to be influenced by the rulings which I made during the course of the trial or the manner in which I made them. I say to you now that I have no opinion in this case as to which of these parties should receive your verdict.

I say to you that you are required to render a verdict in this case based solely on what you heard testified to here by the witnesses

under oath, by the many exhibits that have been marked in evidence, by the questions and answers read from examinations before trial, and any inference that may fairly and reasonably be drawn from all of that evidence.

Now, your duty is exclusive. Just as you have no right to infringe upon what my duties are in the case, I may not infringe upon what the law says is your duty in this case.

Your duty specifically, members of this jury, is to decide each and every question of fact that presents itself for decision in this case. It is your duty also to consider the testimony of witnesses and decide what weight, value and credence you are going to give to the testimony of those witnesses. It is your duty to examine the exhibit, consider what portions of them have already been read to you during the course of the trial, but you are not limited to those portions at all. You may have these exhibits in the jury room for your observation and consideration.

The evidence here has taken two forms: One, the testimony of witnesses under oath from this witness stand, and secondly, exhibits that have been marked in evidence. I judge there must be twenty-nine exhibits which have been introduced by the Plaintiff, and there must be some forty-nine exhibit introduced by the defendant. You should consider those exhibits. You should consider the significance of those exhibits and what weight you are going to give them in deciding the questions of fact in this case.

As I have already indicated, you are also to consider the questions and answers read from examinations before trial where the witnesses who were testifying were confronted with an examination that was held of them prior to trial, and consider that as part of the evidence as well.

With respect to the testimony of witnesses, you should consider the conduct and demeanor of each witness as he testified from this witness stand. Consider his age. Consider the

probabilities of the stories of the witnesses as they related them to you from this witness stand in the light of the circumstances and under the conditions about which they were testifying. Consider whether any witness is prejudiced or biased either for or against the Plaintiff on the one hand or for or against the defendant on the other.

Consider whether any witness has willfully falsely testified as to a material fact in this case, and with respect to that I say to you that if you find that any witness has willfully falsely testified as to a material fact in the case you may, if you see fit under all the circumstances, disregard the entire testimony of that witness. However, you are not required to do so. The law gives you the option to disregard that portion of the testimony of a witness that you believe to be false, and you may take the portion of the testimony of such a witness that you believe to be true.

Determine if there was any animosity,

any prejudice or any bias as I have already indicated disclosed in the testimony of those witnesses, and consider any relationship, if any, business or otherwise, and whether that relationship in the business caused any witness to show some bias or prejudice in this case in favor of or in behalf of one side or the other.

In addition to that, as I have indicated, we have all these exhibits: We have the contract, the merger contract, and -- I am going to use abbreviated terms. LEM is the defendant corporation here. When LEM was taken over by Twin Disc, we had the merger contract, and then simultaneously the employment contract which was entered into between the Plaintiff and the defendant.

Consider all reports and everything that has been marked in evidence here. Examine them and determine what weight and value you are going to give to those papers insofar as they assist you in deciding each and every question of fact in this lawsuit.

Again I say also that you are to consider what was read from depositions of the witnesses who were confronted with prior statements made concerning some of the issues in this case. Then taking all of that evidence, and any inference that you may reasonably and fairly draw from that evidence, and then decide who is right and who is wrong in this case.

To be more specific now, the Plaintiff here, Mr. Frank Lowell, sues LEM Instrument Corporation, the defendant, for breach of an employment contract dated July 3, 1968. He asserts in his papers, and he has attempted to prove to you in this case, that after the contract of employment was entered into, he did proceed to do what the contract calls for, assumed his duties, and he says that he discharged his duties faithfully and diligently and in the best interests of this corporation, and that he was discharged before the term of the contract came about.

That contract was for a period of seven years which would have expired on July 3, 1975.

He says that by reason of his unlawful discharge and his discharge without cause he has suffered damages, namely the amount he would have earned under this contract, including salary, cost of living benefits, insurance, the use of a car, and perhaps others that escape me at the moment.

The contract is here, and you have a right to look at it, and it provides for all the benefits which the Plaintiff was to receive under said contract. That's the Plaintiff's claim, that he was discharged without cause, and that he is entitled to recover what he would have recovered under this contract if he hadn't been unlawfully discharged.

There is no question here that the contract was entered into. Both sides agree to that. However, the defendant asserts that this Plaintiff did not perform all of the terms and conditions on his part to be performed under the terms of the contract, that he didn't faithfully and diligently discharge the duties called for in the contract, and that he

didn't use his best efforts on behalf of this corporation who employed him as manager and president of that corporation.

The Defendant further asserts that because of the Plaintiff's failure to do what was called for him to do under that contract that the Plaintiff therefore breached the contract and that for that reason the Defendant discharged him, and that there was good cause for discharging him because he failed to perform all the duties under the contract that he should have performed.

The Plaintiff in support of his contention here testified, and I'm not going to go through all of the details of the testimony, but in substance he told you what he did after he became employed. He told you how he projected sales and how he projected profits out of his negotiations with members of the Board and officers of Twin Disc and Directors of both corporations, and in effect he says, "I did all that I was required to do, and therefore, I'm entitled to recover under the contract."

The defendant on the other hand produced witnesses who testified in effect that, well, that he didn't get along with employees, and they testified that he didn't get representatives to market those products that were being manufactured here, this encoder, whatever it is, and that he didn't get along with his customers, that he didn't follow them up, that he didn't do many things that you have heard from the testimony of the witnesses that they said he failed to do, and that he didn't make proper reports. In other words, to sum it up, they are in essence complaining and saying that he mismanaged this corporation, and that by reason of his mismanagement the corporation never made any money, that they have sustained losses during the four years that he was with them, and that because he failed to do the things that they claim here, this proper management, the proper leadership among other things, that the failure to get along with the employees, and discharging them when he shouldn't have, and not having representatives

handle these products being manufactured for distribution, that because of these things the Defendant has attempted to show you that the Defendant was right in discharging the Plaintiff on October 9th -- ultimately on the 11th -- but he was told he was discharged on October 9th, 1972.

The Defendant takes the position that because of that this Plaintiff is not entitled to recover anything under the contract.

I say to you that you are to decide here whether this Defendant was justified in dismissing this Plaintiff on October 9th, 1972. The Defendant has the burden of proof here in establishing that it was justified in dismissing this Plaintiff as an employee of the Defendant corporation, and he has to prove, the Defendant, must prove that by a fair preponderance of the evidence in this case.

The Plaintiff on the other hand has the burden of proving by the same fair preponderance of the credible evidence that he entered into the contract with this Defendant corporation,

and as I said before, there is no dispute as to that. The Plaintiff must also prove by that fair preponderance of the evidence that he performed all of the terms and conditions of that contract on his part to be performed, and that he was wrongfully discharged, and that he was damaged.

On this issue of whether the defendant was justified in dismissing the Plaintiff from his employment, if notwithstanding the Plaintiff's faithful and diligent performance of his duties and his giving the corporation his best interests the LEM Corporation suffered financial losses which were beyond Plaintiff's control -- he claims it was the fact that the aerospace business practically went out of business, and they had orders with them, and, therefore, they couldn't pursue that type of business any longer. In other words, if the losses were sustained for any reasons other than the failure of the Plaintiff to faithfully and diligently perform its duties, and his best efforts to the LEM Corporation, then he may not

be held responsible for those losses, and the fact of the losses, that losses were incurred alone would not be a breach of the contract by the Plaintiff.

If, however, the losses were due to the Plaintiff's failure to faithfully and diligently perform his duties and to use his best efforts in the operation of the business of the corporation, or the failure to establish harmonious relationships with employees, and his failure to establish dealerships with people who could handle this project and market it, and if it resulted from his failure to give adequate leadership and direction, and that is proven to your satisfaction by a fair preponderance of the evidence by the Defendant -- because he has the burden of proof on that -- then the Defendant would have cause to discharge this Plaintiff, and in that event the Plaintiff may not recover any salary in this case or any other benefits.

You are to say from all the evidence whether the Plaintiff duly performed all of the

provisions on his part to be performed under the contract of employment with the defendant, and you are also to say whether under all the circumstances, taking the totality of the circumstances in this case, and considering the conduct of the Plaintiff here, the conduct of other people connected with this operation, whether considering all those things the Plaintiff failed to perform the duties that were required of him under the contract, then when the defendant discharged the Plaintiff on October 9, 1972, the defendant would have good legal cause to discharge him. I have already indicated during the course of the trial that the contract is not conditioned upon making a profit before this Plaintiff was entitled to his salary and the other benefits provided therein. However, you may consider the losses sustained by the corporation, the Plaintiff's projected sales and projected profits, and the operation plans which he devised. You may consider those things that you find took place from the evidence while the Plaintiff was the

general manager and president of the corporation. I say and repeat that you may consider all those things on the broad question of whether the Plaintiff faithfully and diligently performed his duties under the contract, and whether he used his best efforts on behalf of the corporation in the operation of said business in accordance with the provisions of the contract of employment contained in paragraph 1 thereof.

The failure to perform may be shown by the totality of the circumstances and whatever happened in the overall operation of the business of the corporation by this Plaintiff, including as I said before, proof of losses sustained, proof of the failure of the Plaintiff to use his best efforts, and proof of his failure to faithfully and diligently perform his duties or to use efficient methods of dealing harmoniously with the staff of the employees in the defendant's business, and in furtherance of the business of the corporation, and by showing failure to furnish reasonable leadership and direction.

When I mention these things, you are not

to feel that I believe these things have been shown. I say these are things you may consider on the question of whether the defendant was justified in dismissing this Plaintiff as an employee of the corporation.

If the Plaintiff's conduct in the operation of the business, and his relationships with Mr. Everett, Mr. Samuel and other employees was such that he materially hindered the efficient operation of the business, or it amounted to mismanagement of the business, you may consider such conduct on the part of the Plaintiff on the broad question of whether the Plaintiff faithfully and diligently performed his duties as provided for in the contract, and whether he used his best efforts on behalf of the corporation as provided therein.

If you find from the evidence that the Plaintiff failed to faithfully and diligently perform his duties, or failed to use his best efforts as called for in the contract, then the Plaintiff may not recover any salary since those failures would constitute a breach of the con-

tract by the Plaintiff, of the contract which he entered into with the defendant. However, if you find by the fair preponderance of the credible evidence that the Plaintiff duly performed all of the terms and conditions of the contract to be performed on his part, and that the defendant wrongfuly discharged the Plaintiff and without cause on October 11, 1972, then the Plaintiff is entitled to your verdict in this case.

While there are many exhibits in the case, there is much testimony in the case, and it may seem to be complicated. In essence, the issue for you to decide is a very simple one, however: Was there a contract? Both sides admit that. Did the Plaintiff perform his terms of the contract or didn't he? Was there a breach on the part of the defendant here, and what damages did the Plaintiff suffer by reason of that breach?

I am not, as I said, going to go into detail about the testimony of the witnesses because I don't think it is necessary. You

have listened attentively, and you have seen the witnesses as they testified, and you are in a position, I suggest, to consider all that testimony without my reviewing every exhibit and every piece of testimony in the case.

With respect to what a witness may or may not have said during this trial, there may be on occasion a difference of opinion between lawyers as to whether a witness said thus and so, or whether he said something else. You are to take your own independent recollection, and you are to apply that recollection and that recollection alone when you go into the jury room, as to what a witness may or may not have said. Even my recollection, if I allude to testimony of witnesses, is not binding on you. The law says the jury and the jury alone -- its recollection will control in determining what the testimony on any given point has been in the case.

I must emphasize that the evidence in this case came from the mouths of the witnesses and from the exhibits and questions and answers

in examinations before trial. The lawyers have their duty to perform, as I have indicated, and during summation they may have argued to you that a witness said thus and so during the course of the trial. It is not what their recollection is or what mine is as to the testimony, I repeat. It is your own independent recollection that controls, and you are to accept that and not the Court's or even the lawyers' recollection.

I charge you that the Plaintiff Frank Lowell is a party to this action and is an interested witness. That is, he is a witness who has an interest in the outcome of this case, a financial interest.

I charge you further that Mr. John Batten and Mr. Wilton Gibson as officers of Twin Disc Corporation, which corporation guaranteed the performance of the employment contract involved in this case are also interested witnesses because they have an interest in what happens here. If the Plaintiff wins, they will have to pay the judgment.

With respect to the testimony of interested witnesses, I charge you that you are to consider the testimony of every interested witness in light of the interest which they bear to the outcome of this case. That does not necessarily mean they are not worthy of belief. The law says, however, that you should scrutinize very carefully to determine whether they have lied or whether they have exaggerated or whether they have failed to tell the truth in the case. That applies to all three of these men that I have mentioned. You may accept so much of it as you believe to be the truth. If you believe the interested witness has told the truth, accept it. If you believe that he hasn't, of course, then you reject it.

I say to you that Mr. Robert Everett and Mr. Joseph Samuel and the other witness who testified, Mr. Panhof, are not classified under the law as interested witnesses. However, you may consider whether they displayed from this witness stand by their conduct and demeanor

or otherwise any prejudice or bias as against this Plaintiff or any prejudice or bias against the defendant in this case, or in favor of the parties even though they are not interested witnesses so classified under the law.

I have referred to the burden of proof here. I have referred to the fact that the Plaintiff has to prove as to the making of the contract that he performed all of the conditions on his part to be performed, that the defendant breached the contract, and that he suffered damages. He has to prove those things be a fair preponderance of the credible evidence.

I have also told you that on the question of the unlawful discharge, the defendant has the burden of proving the unlawful discharge.

What do I mean by burden of proof, to prove their contentions by a fair preponderance of the credible evidence? That simply means that when you take all the evidence that you believe to be the truth in this case, and place it on the imaginary scale of justice, one side

the Plaintiff's side and the other side the Defendant's side, and weighing the credible evidence, if on the Plaintiff's case against the Defendant the scales tip down in his favor, if the credible evidence outweighs the evidence against him, then the Plaintiff in this case has sustained the burden of proof and is entitled to your verdict in this case.

On the other hand, if the scale is evenly balanced, or it goes without saying that if it tips down in favor of the Defendant's contention, then the Plaintiff has failed to sustain the burden of proof and is not entitled to your verdict.

As to the Defendant's burden to prove by a fair preponderance of the evidence that it had a right to discharge this Plaintiff, the Defendant has the same burden. You put on the scale with regard to that the issue of unlawful discharge as claimed here by the Plaintiff. Plaintiff says it was unlawful; Defendant says it was lawful. Sift the evidence. Consider it. Analyze it and

determine whether there is more evidence supporting the defendant's contention here, namely that the defendant had a right and had good cause to dismiss this Plaintiff. Determine whether or not there is more evidence in favor of that contention than there is opposed to it, and if there is, the defendant has sustained the burden of proof in this case on the question of discharge, and your verdict must then be in favor or the defendant.

However, on that issue, if the scale is evenly balanced, or it tips down in favor of the Plaintiff's contention on the question of unlawful discharge, then the defendant has failed to sustain that burden and your verdict with respect to that unlawful discharge should be in favor of the Plaintiff.

An employer is justified in terminating its employee's employment based on any specific isolated incident if it is sufficiently egregious, if it's bad enough, in other words. However, if an employer does not act ~~properly~~ promptly in connection with an isolated instance, he can be

found to have waived his right to discharge an employee for that reason. However, an employer is also permitted to discharge an employee even if the employer condoned individual acts if the accumulated actions of the employee taken as a whole justify his discharge. The continued conduct in effect revives the previously condoned act and justifies the employer in considering the entire history of the employee's actions and conduct in that regard.

In this connection I charge you that you may find that the defendant was justified in relying on the entire conduct and actions of the Plaintiff between 1968 and 1972 if it appears to your satisfaction by a preponderance of the evidence that the Plaintiff's conduct taken as a whole including the acts done in 1972 justified his discharge.

The very important issue for you to decide is who is to receive your verdict here. Is it to be the Plaintiff, for a sum of money, or in favor of the defendant, in which event the Plaintiff would receive nothing.

If you find for the Plaintiff within the rules of law I have given you, if he has established to your satisfaction his claim by a fair preponderance of the credible evidence, and there was no cause for the defendant to discharge him, then he is entitled to damages. On this issue I am not going to go through all the figures again. You have heard them. He is claiming salary. He is claiming cost of living benefits. He is claiming the automobile, or half of it, which amounts to about $1,250 because the testimony as I recall it, and here you take your recollection, not mine, is that it was $2,500 a year for the use of the car, and he said he used it fifty per cent in business and fifty per cent for his own enjoyment. He is claiming that portion of it that he would enjoy privately because obviously, he can't use the other half in business. He is claiming bonuses as well..

If you decide, and only if you decide, that the Plaintiff is entitled to your verdict, then you consider the question of damages in

this case.

I charge you that merely because I am alluding to the damages and merely because I am instructing you on the elements of damages in this case does not mean that I believe the Plaintiff is entitled to your verdict. I am trying to cover every possible contingency that the law requires me to cover.

If and only if you decide that the Defendant was not justified in discharging the Plaintiff do you consider the question of damages.

In this connection I have indicated that I do so because the law requires me to do it and not because I think the Plaintiff is entitled to those damages.

As part of the Plaintiff's proof in this case he must establish, in addition to the right to a verdict, he must establish also by a fair preponderance of the evidence what damages he sustained. Assuming you find for the Plaintiff, you must determine the amount of money he is entitled to, and in determining

this you must decide how much money he would have received had the contract been performed by both sides. You cannot give a Plaintiff a recovery for any greater amount than the amount called for in the contract as stipulated as salary and benefits.

On his first cause of action the Plaintiff is seeking to recover the amount of compensation which he would have earned over the remaining two years and nine months of a seven-year contract. After you determine the total sum of money which the Plaintiff would have received, you must discount this total sum to its present value. After all, if the contract had been performed completely, the Plaintiff would not have received some of the money until 1975, but he's getting it now if you find in his favor, and it is for you to say how much that discount should be.

The Plaintiff is also seeking damages for loss of alleged fringe benefits. In this connection I charge you that he is only entitled to that amount of money for that item which he

would have received had the contract been completely performed by both sides. He has the burden of proving that he is entitled to those benefits and of calculating the amounts thereof.

There is an assertion here that the Plaintiff waived these benefits when he was president of this corporation, that he could have made out a check and didn't do it. Plaintiff says, "I didn't do it because the Defendant and those connected with Twin Disc told me not to, we weren't making any money, and it would weaken the structure, the financial structure of the corporation more if I took those benefits."

However, there is an issue here.

Defendant says he waived them; Plaintiff says no, "I didn't waive them, I was told to hold up on them, that I would get them later."

It is for you to say upon all the evidence whether by action or in action prior to the date of the termination of the contract the Plaintiff waived his right to some or all of

those fringe benefits..

If you decide that he has waived his rights to some or all of the fringe benefits, it is for you to say the amount by which those benefits should be reduced, and the damages upon the second cause of action should be limited to the value of the fringe benefits less the value of such of those benefits which you find that the Plaintiff waived.

I think I covered this item, Mr. Bobbe, but I will say that there is evidence in the case attending to show that the business -- I don't think it's much in dispute -- that the business failed to operate at a profit, and indeed operated at a loss. However, I say to you that under the contract the Plaintiff did not undertake by his contract to make a profit before he was entitled to his salary. You may not consider the fact that there was a loss alone as legal cause for his discharge.

I have already said you have to take all of the circumstances.

As to the projections made by the

Plaintiff, of profits and losses, I charge you that the failure to achieve those projected levels of sales and profits alone was not legal cause for discharge, but you may consider the totality of the circumstances in the management of LEM by the Plaintiff on the question of whether the Plaintiff mismanaged the corporation, and whether his mismanagement prevented the projection of sales and profits to be achieved.

If you find with respect to the $18,220 cost of living adjustments which the Plaintiff claims due him, that he didn't waive that, then that's an item of damage which he would be entitled to if you find in favor of this Plaintiff.

The mere fact that the Plaintiff did not pay himself the cost of living adjustment did not in and of itself constitute a surrender of his rights unless it appears from all the evidence that he intentionally surrendered his right to receive that cost of living benefit during the period up to his discharge does not deprive him of the right to receive the adjust-

ment during the remaining period of his contract if he didn't breach it, and if you find that he is entitled to recover it in this case.

I think there is some evidence, but again it's your recollection that counts, to the effect that he computed salaries payable during the past year, and that would be $42,500, and that for the remaining twenty-seven months he computed an additional amount of $97,200, making a total in all of $157,920, together with about $1,250 more for the use of the car, for half the use of the car, and whatever other items you find from the evidence this Plaintiff was deprived of in the way of bonuses and insurance which was another fringe benefit.

The time will come shortly when you are to consider and discuss this case among yourselves in the jury room, that is, the six of you who will go into deliberate. I am going to discharge the others as soon as I am through with my charge.

With respect again to the preponderance of evidence, I indicated to you how you are to

determine that, by weighing the credible evidence, and if there is more evidence on one side than the other, then the person asserting the claim, where the scale sits down in his favor has sustained the burden of proof. We don't refer to the number of witnesses called. That doesn't determine where the preponderance of evidence lies. In law, we refer to the quality of the testimony rather than the quantity of testimony. There could be an instance or instances, if the jury believes the testimony of one witness and not the testimony of four or five or six witnesses, there would be nothing wrong with that under the law. In other words, you take the quality of the testimony and not the quantity of the testimony in deciding whether there is a preponderance of evidence here.

Take this case free from sympathy or prejudice of any kind because it has no place in this Courtroom or in any Courtroom. You were selected as jurors because you swore that you would render a verdict here which would be

a fair and a just verdict between these parties. You are expected to do that. Consider the evidence carefully. Analyze it and then reach a decision in this case as to whether the Plaintiff is entitled to a verdict here. If he is, how much, and name a lump sum. Or, determine whether the defendant is entitled to a verdict here.

After discussing the case thoroughly and conscientiously, if you find that all six of you cannot arrive at a unanimous verdict, the law gives you the right to come into the Courtroom with a five-sixth verdict. In other words, five of the six of you agreeing one way or the other may render a verdict in this case, and that verdict would have the same force and effect as if you had all agreed upon a unanimous verdict.

Any exceptions to the Court's charge?

MR. BOBBE: Yes, your Honor. May I make them in the absence of the jury?

THE COURT: No, let's have it. I'm not going to send them back.

MR. BOBBE: I respectfully take exception to that part of the charge, your Honor, where you said the jury may take the totality of the circumstances into account in passing on whether the Plaintiff has failed to perform the duties required to be performed by the contract.

THE COURT: You have an exception.

MR. BOBBE: Also that they may consider the losses sustained, projected sales and profits in the operation, that if they find that that took place as part of the totality of the circumstances.

THE COURT: You have an exception.

MR. BOBBE: I also call your Honor's attention to the fact that you perhaps inadvertently neglected to note that the contract has two more years to run plus an extension for one year at half pay.

THE COURT: Well, that's all in the twenty-seven months, or twenty-nine months that I have referred to.

MR. BOBBE: Yes, but in the earlier

part of your charge you referred to it only up to the end of '73.

THE COURT: Yes, you are right on that, and I so charge the jury.

MR. BOBBE: I also take exception to your Honor's charge that the defendant was not obliged to act promptly in connection with any isolated case, but may discharge the employee even if it condoned that individual act and continued the Plaintiff in its employ.

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THE COURT: I don't think you are quoting me quite accurately, but I know what you are referring to on that issue, and you have an exception.

MR. BOBBE: Yes.

When your Honor spoke of a waiver of the right to the cost of living increase for the year when he was employed, I think you probably neglected to say that that waiver did not apply to any future earnings if the jury finds a verdict in his favor.

THE COURT: I so charge, yes.

MR. BOBBE: Thank you, sir.

THE COURT: Mr. Hughes?

MR. HUGHES: Your Honor, I have no exceptions to the charge except to observe that I didn't understand your Honor to have charged on the question of mitigation of damages, and I would respectfully request your Honor to charge the jury on that subject in accordance with our request to charge number 13.

THE COURT: Ordinarily, a Plaintiff, an employee in a breach of contract employment case must mitigate. That means reduce, if he can, his damages. However, the employer in this case, LEM, must come forward with some viable proof that the Plaintiff could have obtained another position of the kind which he held with the defendant and didn't accept it before the employee is required to prove mitigation of damages.

Although the Plaintiff did offer some, as I recall, and again this is your recollection now, members of the jury -- he indicated that he couldn't find any work of this kind. He told you what he did. He was not bound to

do it since the defendant in this case, as I recall it at least, failed to offer some viable proof that the Plaintiff could have obtained such similar employment with someone else, and because of that the Plaintiff was not required to show affirmatively that he did everything he could to mitigate the damages.

You may except to that, counsel.

MR. HUGHES: Yes, I except, your Honor.

THE COURT: Well, I think that is the law, Mr. Hughes.

MR. HUGHES: I except to your Honor's refusal to charge in accordance with paragraph 13 of the requests. That's the only objection.

THE COURT: Very well.

Now, do you want to take these exhibits with you before you leave the Courtroom? If so, you can take them, and not waste time sending down for them.

JUROR NUMBER 1: Yes, sir.

THE COURT: The two alternates, thank you very much for serving here. You have

rendered a valuable service to the people of this County, and I appreciate it as the Judge presiding in this case, and I am sure the public officials of this County appreciate it.

Good luck to you, and you are discharged.

Now, Mr. Foreman, madam and gentlemen of the jury, you may go to your jury room and decide this case.

(Whereupon, the jury retired to deliberate at three-fourteen p.m. o'clock.)

(At four-thirty-two p.m. o'clock the jury returned to the Courtroom and the following occurred:)

(Roll call of jury.)

THE COURT: Take the verdicts.

THE CLERK: Members of the jury, have you agreed upon a verdict?

JUROR NUMBER 1: Yes.

THE CLERK: Mr. Foreman, please rise and state your verdict.

JUROR NUMBER 1: Your Honor, we find for the defendant.

THE CLERK: You may be seated, sir.

Members of thejury, listen to your verdict as it stands recorded by this Court. You say you find a verdict in favor of the defendant, LEM Instrument Corporation, is that your verdict?

JUROR NUMBER 1: Yes.

THE CLERK: So say you all? Was it unanimous?

JUROR NUMBER 1: Yes.

MR. BOBBE: May I have the jury polled, your Honor?

THE COURT: Yes.

THE CLERK: Members of the jury, you say you find a verdict in favor of the defendant, LEM Instrument Corp.

Juror Number 1, is that your verdict?

JUROR NUMBER 1: That's correct.

JUROR NUMBER 2: That's correct.

JUROR NUMBER 3: Yes.

JUROR NUMBER 4: Yes, sir.

JUROR NUMBER 5: Yes, sir.

JUROR NUMBER 6: Yes.

THE CLERK: Unanimous, sir.

THE COURT: The verdict is so recorded.

MR. BOBBE: I respectfully move to set aside the verdict and for a new trial on the grounds that it is against the weight of the evidence.

THE COURT: Motion denied, sir.

MR. BOBBE: Exception. May I have a thirty-day stay, sir?

THE COURT: Thirty-day stay, sixty days to make a case.

Members of the jury, I want to thank you for the service you have rendered in this case, and to tell you that I appreciate the time you took to come here and to help us administer justice in this matter. I offer this thanks on behalf of the County of Suffolk and myself, and I discharge you now as jurors in this case, and I thank you again for the services you have rendered. You had better report back to the central jury room at this time.

(Whereupon, the trial of the matter concluded.)

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C E R T I F I C A T I O N is hereby given that the foregoing is a true, complete and accurate transcript of the stenographic notes taken by me herein on the dates indicated.

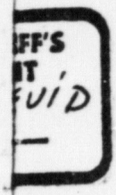
William J. Fugelsang, C.S.R.
Official Court Reporter

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5/6/68

PLAINTIFF'S EXHIBIT 1 - STOCK ACQUISITION AGREEMENT
(Introduced at page 14)





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STOCK ACQUISITION AGREEMENT

This Agreement made this 3rd day of July, 1968, by and between FRANK LOWELL and ROBERT EVERETT (hereinafter referred to as "SHAREHOLDERS"), and TWIN DISC, INCORPORATED, a Wisconsin corporation of Racine, Wisconsin (hereinafter referred to as "TWIN DISC"),

WHEREAS, SHAREHOLDERS are the owners of all of the outstanding capital stock of LEM INSTRUMENT CORPORATION (hereinafter referred to as "LEM"), a New York corporation, and desire to exchange said shares for shares of the common capital stock of TWIN DISC, and TWIN DISC desires to exchange shares of its common stock for all of the outstanding shares of LEM,

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein set forth, it is agreed as follows:

1. Exchange of Shares. SHAREHOLDERS are the owners of record and holders of all of the twelve (12) issued and outstanding shares of common stock, No Par Value (hereinafter sometimes called "LEM Shares") as follows:

FRANK LOWELL	8 Shares
ROBERT EVERETT	4 Shares.

It is the intention of the parties hereto that all of the twelve issued and outstanding shares of common stock, No Par Value of LEM shall be acquired by TWIN DISC and exchanged solely for shares of TWIN DISC's voting common stock, No Par Value (hereinafter sometimes called "TWIN DISC Shares"). TWIN DISC

PLAINTIFF'S EXHIBIT 1

and SHARHOLDERS agree that all of the LEM shares shall be exchanged with TWIN DISC for TWIN DISC shares on the following bases.

Upon execution of this agreement, TWIN DISC will deliver to LOEWI & CO., INCORPORATED or a recognized broker, approved by SHAREHOLDERS, making a market in TWIN DISC stock its check in the sum of One Hundred Fifty Thousand ($150,000.00) Dollars together with instructions to said broker to purchase on the market shares of TWIN DISC stock to be placed in the names of the SHAREHOLDERS in proportion to their respective interests herein. Said broker will be instructed that his purchase of TWIN DISC shares under such instructions shall be managed in such a way as to have the least effect upon the quoted market price for such shares, provided, however, that the purchases shall not be spread out for a period of greater than three (3) months following the date of such instructions.

In addition during the seven (7) fiscal years completed following the date of this agreement, TWIN DISC shall deliver to such broker additional sums to be used for the acquisition of additional shares of TWIN DISC stock, the amounts of which shall be determined in accordance with the following provisions:

Promptly after the termination of each fiscal year of LEM, TWIN DISC's accountants (presently Lybrand, Ross Bros. and Montgomery) shall, in accordance with standard and accepted accounting principles and practices, verify the annual statement of LEM determining thereby the pre-tax net earnings of LEM for such fiscal year after the deduction of accumulated operating losses incurred subsequent to April 18, 1968 and not previously

PLAINTIFF'S EXHIBIT 1

offset against earnings.

Further, it is agreed that if the Directors of LEM determine upon a course of business action for LEM, which it is contemplated will result in a determinable loss or diminution of profits, though in the long-term best interests of LEM, then such loss or diminution of profits is to be disregarded in making such calculations relative to such additional shares.

The amount to be delivered by TWIN DISC to the broker for the purchase of TWIN DISC shares shall be then computed at twenty-five (25%) percent of such pre-tax net earnings. Verification of such accounts, delivery of said funds to the broker and broker's purchase of shares shall be within ninety (90) days after the end of the fiscal period involved. In order to facilitate these computations and in order that LEM's fiscal year may conform with that of TWIN DISC, it is agreed that LEM shall change its accounting periods so that its fiscal year shall end of each June 30, and the first additional payment provided for hereunder shall include the fiscal year ending June 30, 1969 plus any time from the effective date of this agreement to and including June 30, 1968. TWIN DISC has advanced funds to LEM pursuant to a separate loan agreement dated April 18, 1968. For these purposes, therefore, the effective date of this agreement shall be deemed to be April 18, 1968.

It is further agreed that funds delivered to the broker for purchase of shares of TWIN DISC stock, under the terms hereof, for the original purchase and during the seven additional years shall not exceed in aggregate the sum of Five Hundred Thousand

PLAINTIFF'S EXHIBIT 1

($500,000.00) Dollars. The purchase of such shares by the broker shall be by the broker, as agent for TWIN DISC.

It is further agreed that twenty-five (25%) percent of all shares of TWIN DISC stock acquired during the first two years of this agreement for subsequent transfer to the SHAREHOLDERS under this agreement shall, upon acquisition, be delivered to First Wisconsin Trust Company, Milwaukee, Wisconsin, as agent for SHAREHOLDERS, under an Escrow Agreement substantially in the form set forth as "Exhibit B" attached hereto which shall be entered into by the SHAREHOLDERS as provided for in Paragraph 3(h) of this agreement.

2. Delivery of LEM Shares. On the closing date, SHAREHOLDERS shall deliver certificates for their respective LEM shares duly endorsed in blank, or with duly executed stock powers attached, in proper form for transfer, with signatures guaranteed, and with documentary stamps affixed at SHAREHOLDERS' expense, so as to make TWIN DISC the sole owner thereof, free and clear of all liens, and all trusts, claims, charges, encumbrances, and other restrictions upon the assignment or transfer thereof.

3. Representations and Warranties of SHAREHOLDERS. For the purpose of inducing TWIN DISC to enter into this agreement, the SHAREHOLDERS make the following representations and warranties on their best knowledge, information, and belief.

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PLAINTIFF'S EXHIBIT 2 - Employment Contract (Introduced at page 14)

EMPLOYMENT CONTRACT

Agreement made this 3rd day of July, 1968 by and between LEM INSTRUMENT CORPORATION (hereinafter called "LEM"), a New York corporation, and FRANK LOWELL (hereinafter called "Lowell") of Farmingdale, New York,

WHEREAS, all of the capital stock of LEM is being acquired by TWIN DISC, INCORPORATED (hereinafter called "TWIN DISC"), a Wisconsin corporation, pursuant to a Stock Acquisition Agreement between TWIN DISC, Lowell, and Robert Everett, and, which will result in LEM operating as the wholly owned subsidiary of TWIN DISC, and

WHEREAS, Lowell has served as President of LEM, and LEM desires that his services continue to be available to LEM,

NOW, THEREFORE, in consideration of the mutual covenants, conditions and agreements herein, it is agreed as follows:

1. Lowell is herewith employed by LEM as General Manager and President of the Company for the term of seven (7) years beginning as of the date of this agreement, as long as he shall faithfully and diligently perform the duties of his employment and shall engage in no activities which are detrimental to the business interests of LEM or TWIN DISC. LOWELL agrees to devote his full time and his best efforts in the furtherance and interests of LEM. It is also anticipated that Lowell will be elected as Director of the Corporation without additional compensation. Full time as used herein shall mean that time customarily devoted as President, Director and General Manager, by other such executives with comparable education, training and experience who are employed by comparable firms.

PLAINTIFF'S EXHIBIT 2

2. LEM agrees to compensate Lowell for his services hereunder on the following bases:

a. An annual salary of $35,000.00 payable in equal semi-monthly installments commencing April 18, 1968 with cost of living adjustments in the same manner as said cost of living adjustments are accorded to employes by TWIN DISC. Said salary includes a beginning base salary of $26,120.00 per annum plus the applicable cost of living adjustment.

b. Annexed hereto as Schedule A is a forecast of sales and profits of LEM for the seven (7) year term of this contract. If the after-tax performance of LEM shall exceed the forecasted figures at the end of the third and fifth years of this agreement, the basic salary for each ensuing year otherwise provided under paragraph a. above, shall be proportionately increased, provided, however, that no such increase shall result in the basic salary exceeding that of the average base salary (currently $36,640.00) for the five top TWIN DISC Vice-Presidents (not including any Executive Vice-President).

c. Annual bonuses determined by the Board of Directors of LEM out of after-tax profits in excess of twelve percent (12%) of LEM capital plus accumulated earnings without reduction for accumulated losses shall also be paid, provided that such bonus shall not exceed twenty percent (20%) of the salary for the applicable period.

PLAINTIFF'S EXHIBIT 2

3. Lowell acknowledges that as between Lowell and LEM, LEM is the owner of and has the unencumbered right to use the ideas, designs, techniques and know-how presently used by it and developed by Lowell for use in the production, sale, use or distribution of its products. Any invention, improvements or development made or originated by Lowell at any time during the life of this agreement, and in any way relating to the matters aforesaid or to the manufacture or use of the company's products, shall be and remain the property of LEM and, if deemed appropriate to its protection by LEM, Lowell shall execute such documents of assignment thereof as LEM may request without any provision for royalty or other payment of any kind. Further, Lowell will, at LEM's request, cooperate with it in filing and obtaining any patents, copyrights, or similar protection that may be available for such developments.

4. In consideration of this employment contract, and the payment to him of the compensation provided for his service, Lowell agrees that during the life of this agreement and for the period of one (1) year after its termination (except for default or breach by LEM), he will not, directly nor indirectly, or as employe, consultant, agent, representative or otherwise nor as owner, partner, joint venturer or shareholder of more than five percent (5%) of the stock of any company, engage in any activity in competition with LEM, TWIN DISC, or the successors to the business of either. For these purposes an enterprise shall not be deemed in competition with TWIN DISC or LEM if it is engaged in the business of manufacturing or

PLAINTIFF'S EXHIBIT 2

selling components for use only in total machines or equipment manufactured, built or assembled by such enterprise, (rather than in the manufacture of such components primarily for sale to others) in the following fields:

Precision Clutches and Brakes;

Automatic Tensioning Systems;

Analog to Digital Shaft Encoders;

Precision Speed Reducers;

Digital Sensors;

Remote Digital Control Systems; and

Automatic Density Control Devices.

On termination of this agreement, Lowell shall be offered a one-year consultancy agreement at compensation equal to one-half the compensation, without bonus, for the final year, following which the restrictions on competition shall terminate.

5. Lowell agrees that the knowledge he presently has, or may obtain in the course of his employment, with respect to the conduct and details of the business, processes, formulae, machinery, and arts, which are secret, used in the manufacturing of its products will not be imparted to anyone whomsoever other than the officers or employes of LEM or the representatives of TWIN DISC, or the customers of either in the normal conduct.

PLAINTIFF'S EXHIBIT 2

of their business, and that if he violates the terms of this provision or of Paragraph 4. above, LEM, or its successor, shall be entitled to an injunction obtained in any court of competent jurisdiction restraining him and each and every other person concerned therein from the continuance of such breach.

6. In addition to the compensation hereinabove provided, it is agreed that there shall be made available to Lowell fringe benefits on the basis comparable to those afforded employes of TWIN DISC charged with similar duties and receiving similar compensation. If feasible, said benefits may be provided directly by TWIN DISC under such plans for benefits made available to its employes, but with the cost thereof charged to LEM in such event. The areas of such benefits are:

a. Management Group Consulting and Widows Benefits Arrangements

b. Keyman Group Insurance (Life) with premiums chargeable to you as salary

c. Group Accident, Health and Travel Insurance

d. Retirement Plan

e. A company automobile with appropriate insurance therefor

f. Option to acquire Twin Disc stock on the same bases as the same may be offered Twin Disc's top five Vice-Presidents (other than Executive Vice-President).

7. In the event of the requirement of any notice

PLAINTIFF'S EXHIBIT 2

provided for under this instrument, the same shall be deemed effectively given by certified mail, return receipt requested, in the case of TWIN DISC, addressed as follows:

Twin Disc, Incorporated
1328 Racine Street
Racine, Wisconsin 53403

Attention: Robert T. Howell;

in the case of notice to Lowell to:

Frank Lowell
25 Alpine Way
Huntington Station, New York.

8. This agreement shall be binding upon the heirs, representatives, successors or assigns of the parties hereto. The agreement shall be construed in accordance with the laws of the State of New York, and in the event it shall be determined that any provision above is violative of any law and unenforceable, the remaining portions shall nonetheless be of full force and effect, unless inconsistent with the agreement with such clauses removed.

IN WITNESS WHEREOF, these presents have been executed by the parties hereto as of the day and year first above written.

LEM INSTRUMENT CORPORATION

By Robert A. Everett
Its Vice President

Attest:

By Robert A. Everett
Its Secretary

Frank B. Lowell
FRANK LOWELL

PLAINTIFF'S EXHIBIT 2

For valuable consideration, TWIN DISC, INCORPORATED herewith guarantees performance of the terms of this agreement to be performed by LEM, and to vote its share of LEM Stock to elect Lowell to LEM's Board of Directors during the life of this agreement. In the event LEM is either liquidated or disposed of, either through sale of assets or through sale of controlling interest in its stock, TWIN DISC will make available to Lowell employment in New York City or Long Island on a comparable schedule of compensation (other than the additives provided under Paragraph 2.c. of the foregoing agreement), provided, however, that no part of this guarantee shall be effective in the event LEM or its assets are disposed of to Lowell and/or Everett, or to their nominees.

DATED at Racine, Wisconsin, this 3rd day of July, 1968.

TWIN DISC, INCORPORATED

By Wilton B. Gibson

Its Vice President

(Corporate Seal) Attest:

By

Its Secretary

PLAINTIFF'S EXHIBIT 2

Schedule "A"

LEM Instrument Corporation

Letter of Intent

21 March 1968

FORECASTED SALES AND PROFITS

Year	Projected Sales	Proj. Profit Rate Before Tax	BEFORE ~~After~~ Tax Annual Net Profit
1	$ 300,000.00	17.0	$ 51,000.00
2	600,000.00	16.5	99,000.00
3	1,000,000.00	16.0	160,000.00
4	1,400,000.00	15.5	217,000.00
5	1,800,000.00	15.0	270,000.00
6	2,200,000.00	14.5	319,000.00
7	2,600,000.00	14.0	364,000.00

EXHIBIT 3 - CERTIFICATION OF RESOLUTION (Introduced at page 17)

CERTIFICATE OF RESOLUTION

Rep. Exhibit 5/25/73-RGW

The undersigned Secretary of Twin Disc, Incorporated, certifies that on the 21st day of March, 1966 at a meeting of the Board of Directors of said Company, duly called and convened, whereat a quorum of the Directors were present and acting, the following resolution was adopted. That said resolution remains in force and effect and has not been amended, modified or revoked.

Mr. W. B. Gibson, Vice President - Corporate Development, presented to the Directors a proposal for the purchase of the LEM Instrument Corporation, 20 Sarah Drive, Farmingdale, New York by Twin Disc, Incorporated. He explained that in essence Twin Disc is purchasing two men who have developed a miniaturized clutch and now are in the initial marketing stages. From our own experience in new product development, the purchase price paid to them appears to be somewhat less than it would cost were Twin Disc to start from scratch. Further, that a good deal of time would be saved by taking over this development in its present stage.

Mr. Gibson recommends that our purchase price to LEM be $150,000 to be paid in shares of Twin Disc stock. In addition, as an incentive for the principals of LEM to continue with that corporation over a seven-year period, they will have an opportunity to receive an additional $350,000 in Twin Disc stock, such payment to be based on 25% of the LEM Instrument Corporation pre-tax earnings.

EXHIBIT 3

Under the terms of our proposed letter of intent, Twin Disc will agree to put in no less than an additional $250,000 into the LDI Instrument Corporation.

PLAINTIFF'S EXHIBIT 4 - Re-Stated By-Laws of LEM
(Introduced at page 21)

RE-STATED

BY-LAWS

OF

LEM INSTRUMENT CORP.

ARTICLE I - OFFICES

The principal office of the corporation shall be in the Town of Farmingdale, County of Suffolk, State of New York. The corporation may also have offices at such other places within or without the State of New York as the board may from time to time determine or the business of the corporation may require.

* * * * * *

1. BOARD OF DIRECTORS.

The business of the corporation shall be managed by its board of directors, who shall be five in number, and who shall be at least 21 years of age, but need not be shareholders nor residents of the State of New York.

* * * * * *

7. QUORUM OF DIRECTORS.

A majority of the entire board shall constitute a quorum for the transaction of business or of any specified item of business.

8. ACTION OF THE BOARD.

Unless otherwise required by law, the vote of a majority of the directors present at the time of the vote, if a quorum is present at such time, shall be the act of the board. Each director present shall have one vote regardless of the number of shares, if any, which he may hold

* * * * * *

PLAINTIFF'S EXHIBIT 4

(a) Regular meetings of the board may be held without notice at such time and place as it shall by resolution from time to time determine. Special meetings of the board shall be held upon notice to the directors and may be called by the Chairman of the Board or president upon three days' notice to each director, either personally or by mail or by wire; special meetings shall be called by the president or by the secretary in a like manner or written request of two directors. Notice of a meeting need not be given to any director who submits a waiver of notice whether before or after the meeting or who attends the meeting without protesting prior thereto or at its commencement, the lack of notice to him.

* * * * * *

3. CHAIRMAN OF THE BOARD

The Chairman of the Board shall be the senior officer of the corporation, shall preside at all meetings of directors and shareholders, and have prinary control over the methods and amounts of capital financing.

4. PRESIDENT

The President shall be the general manager of the business affairs of the corporation and shall be its principal executive officer. He shall see that all orders, directives and resolutions of the Board of Directors are carried into effect.

5. VICE PRESIDENTS

During the absence or disability of the president, the vice-president, or if there are more than one, the executive vice-president, shall have all the powers and functions of the president. Each vice-president shall perform such other duties as the board shall prescribe.

PLAINTIFF'S EXHIBIT 8 - List of Customers
(Introduced at page 49)

Gilbarco
Bendix
Westinghouse
Fairchild Camera
Sperry Rand
Kollsman Instrument
Pistorious Machine
Grumman Engineering
Republic Aircraft
Sundstrand
Saco-Lowell
Coan Mills
IBM- Rochester, Minn.
IBM- Poughkeepsie, N.Y.
IBM- Raleigh
Eastman Kodak
Detecto Scale
Hazeltine
Airborne Instrument
Udylite
Univ. of Michigan
N.Y. Edison
Lilco
Xerox
Leach Corp.
Borg Warner
Rycon
Itek
Sylvania
Raytheon
Unico
Perkin Elmer
Trak Electronics
Cardion
Brookhaven Nat'l. Labs.
Kearfott
Norden
Univ. of Wisconsin
Gamewell
Hughes Aircraft
Litton
Western Electric

SUPREME COURT - SUFFOLK CO.
PLTF'S EX 21 IDENT.
DEFT'S EVID.
DATE
W. J. FUGELSANG, C. S. R.
OFFICIAL REPORTER

PLAINTIFF'S EXHIBIT 9 - Letter from LEM to Robert A. Everett dated August 11, 1972 (Introduced at page 78)

LEM INSTRUMENT CORPORATION
20 SARAH DRIVE • FARMINGDALE, NEW YORK 11735 • TEL: 516 293-7210

11 August 1972

Robert A. Everett
1798 Horatio Avenue
Merrick, N. Y.

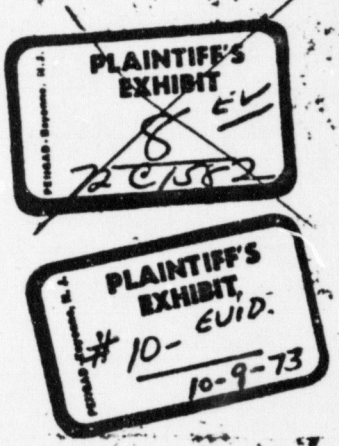
Pursuant to the the terms of your employment contract, you are hereby notified that your salary will cease effective this date.

This action is being taken as a result of your continuing failure to perform your duties in a satisfactory manner. To continue your employment would seriously jeopardize the success of this corporation and as President, I am exercising my authority to dismiss you.

F. Lowell
President

LEM Instrument Corporation

EXHIBIT 10 - Blueprint of Handwritten Proposal
(Introduced at page 67)



LEM Assets

Accounts Rec - Trade	3,693.91	
" " - Depreciat	875.00	4,568.91
Inventory		53,376.22
Prepaid Insurance		120.00
Machy + Equipt Net		9,243.59
Patent		1.00
Deferred R + D		88,297.92
		$ 155,609.64

Twin Disc Investment

Original Purchase	$ 150,000.00	
Debt	137,500.00	
Equity	325,120.00	$ 612,620.00

Will sell assets only to the two principals, change the company name and transfer the name "LEM" to the two principals in exchange for that number of shares of Twin Disc to be determined by the mid-point value between the quotes as in the Wall Street Journal on the day of agreement.

In consideration for an immediate release from employment Contracts held by the two principals, and guaranteed by Twin Disc. and all other terms contained in the original purchase agreement Twin Disc will allow the equivalent of one years of salary for the two principals reducing the sale price to $ 150,000.00

Orig Purchase	5520 Shares @ Aver. of $27.2264 / Share	
3% Stk Dividend	165.6 Shares	
Total Shares Avail	6624	
Recent Aver. Bid	$37.50	= 2667 Shares for $100,000 =
Ask low price	35.00	= 2857 "

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PLAINTIFF'S EXHIBIT 11 - Letter dated October 9, 1972
(Introduced at page 78)



LEM INSTRUMENT CORPORATION
SUBSIDIARY OF
KIN DISC
INCORPORATED
20 SARAH DRIVE • FARMINGDALE, NEW YORK 11735 • TEL: 516 293-7240



October 9, 1972

To: Mr. Frank Lowell
Mr. Robert Everett

This will serve notice to each of you that during a special meeting of the Shareholders of LEM Instrument Corporation on 4 October 1972, each of you were removed as members of the Board of Directors and that the vacancies created were not filled at that time.

A Special Meeting of the Board of Directors of LEM Instrument Corporation was convened immediately following the Shareholders meeting and each of you were terminated for cause as employees and officers of LEM Instrument Corporation effective immediately.

The LEM Board further authorized the undersigned to negotiate with you, or each of you, the acquisition of the assets of LEM offered in a separate letter of equal date.

The LEM Board further resolved that the authority of Frank Lowell and Robert Everett to sign checks on the corporation's bank accounts be revoked effective immediately.

It was further resolved that Wilton B. Gibson, Chairman of the Board, shall personally notify Frank Lowell and Robert Everett of these actions taken by the Board of Directors as soon as reasonably practical.

Sincerely,

Wilton B. Gibson
Chairman of the Board

PLAINTIFF'S EXHIBIT 12 - Letter dated October 9, 1972 (Introduced p. 80)

LEM INSTRUMENT CORPORATION

SUBSIDIARY OF TWIN DISC INCORPORATED

20 SARAH DRIVE • FARMINGDALE, NEW YORK 11735 • TEL: 516 293-7240



October 9, 1972

To: Mr. Frank Lowell
Mr. Robert Everett

Subject: Offer to Terminate the Operation of LEM Instrument Corporation by Twin Disc, Incorporated, the sole shareholder.



This will confirm the offer to sell the assets of LEM Instrument Corporation to the original principals, Mr. Frank Lowell and Mr. Robert Everett made by Twin Disc, Incorporated in the office of Mr. Frank Lowell on Wednesday 27 September 1972.

The offer is to sell the assets only to the two principals, change the company name and transfer the name "LEM" to the two principals in exchange for that number of shares of "Twin Disc" equal to the sale price, to be based upon the mid-point value between the "asked" and "bid" quotes in the Wall Street Journal on the day of agreement.

The asset value is established from the LEM Balance Sheet as at 31 August 1972 as follows:

Accounts Receivable - Trade	$3693.91	
" " - Deposit	875.00	
		$ 4568.91
Inventory -		53376.22
Prepaid Insurance -		120.00
Machinery & Equipment (net) -		9243.59
Patent -		1.00
Deferred Research & Development -		88297.92
		$155607.64

Further, in consideration for an immediate release from employment contracts held by the two principals, and guaranteed by Twin Disc, and all other terms contained in the original purchase agreement, Twin Disc will allow the equivalent of one year of salary for each of the two principals ($35,000.00 and $20,000.00 respectively) reducing the sale price to a net of $100,000.00.

Sincerely,

Wilton B. Gibson

Wilton B. Gibson
Chairman of the Board

John H. Watson
R. T. Howell
D. E. Beaton
M. E. Batten
R. S. Gibbs

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EXHIBIT 12

PROPOSAL MADE TO FRANK LOWELL AND ROBERT EVERETT
ON WEDNESDAY 27 SEPTEMBER 1972

LEM ASSETS:

Accounts Receivable - Trade	$ 3,693.91	
" " - Deposit	875.00	$ 4,568.91
Inventory		53,376.22
Prepaid Insurance		120.00
Machinery & Equipment Net		9,243.59
Patent		1.00
Deferred R & D		88,297.92
		$155,607.64

TWIN DISC INVESTMENT:

Original Purchase	$150,000.00	
Debt	137,500.00	
Equity	325,120.00	$612,620.00

Will sell assets only to the two principals, change the company name and transfer the name "LEM" to the two principals in exchange for that number of shares of Twin Disc to be determined by the mid-point value between the quotes in the Wall Street Journal on the day of agreement.

In consideration for an immediate release from employment Contracts held by the two principals, and guaranteed by Twin Disc, and all other terms contained in the original purchase agreement, Twin Disc will allow the equivalent of one year of salary for the two principals reducing the sale price to $100,000.00.

Original Purchase	5520 shares @ ave. of $27.2264/share
Stock Dividend	1104 shares
Total Shares Available	6624 shares

Recent ave. price	$37.50 or 2667 shares for $100,000.00
At low price of	35.00 or 2857 " " "

Wilton B. Gibson

PLAINTIFF'S EXHIBIT 14 - Handwritten Letter dated Oct. 11, 1972
(Introduced page 91)

Wednesday 11 October 1972

To Whom It May Concern:

This is to certify that I personally hired Frank Terrell whose life period ends July 1973 for the premises of LEM Instrument Corporation at 21 Secatogue Ave. Farmingdale, New York.

LEM Instrument Corporation
William B. Fabian
Chairman of the Board

PL'S EXHIBIT 15, Letter dated July 24, 1972
(Introduced page 95)

RACINE, WISCONSIN
53403 U. S. A.
TEL. (414) 634-1981

TWIN DISC INCORPORATED

CABLE ADDRESS
"TWINCO"
TWX 910-271-2384
TELEX 02 6737

ADMINISTRATIVE OFFICES

July 24, 1972

LEM Instrument Corporation
20 Sarah Drive
Farmingdale, New York 11735

ATTENTION: Mr. Frank Lowell
President

SUBJECT: 1972-73 FISCAL YEAR PROGRAM

Dear Frank:

Under the circumstances now of it being a little harder for you to reach me by telephone, I thought it best to confirm my understanding of your fiscal year program decided upon Thursday.

First, regarding the encoder under test by the Navy at Providence, R.I., write directly to Jim Shiver, giving him all pertinent details from the Navy purchase order. Since Jim is a sub-mariner reserve Officer, it is quite possible he will be able to determine the status of this project. Quite often, the test engineers with whom you communicate, are either reluctant or are not permitted to divulge test status, while someone higher in the command chain can. Anyhow, it will be worth the effort. Tell Jim I asked you to write him.

Next -- your sales projection for 1972-73. I can appreciate your problem due to not having a base of established repeat customers. Therefore, this time, build it up from the bottom in three stages:

1) Products, applications, markets, customers and prospects you propose to concentrate upon or push this fiscal year,

2) Your program or how you propose to accomplish the above and then --

3) Assuming several degrees of success in 1) and 2), give me your estimated sales projections.

You can then relate your fiscal budget to the several projections under 3) above.

Before going on to new products, I would confirm our discussions on each of the above items.

(continued)

FROM: TWIN DISC, INCORPORATED SHEET NO. 2

TO: LEM Instrument Corporation DATE 7/24/72

I recognize as desirable the need for the broadest customer base possible to establish some semblance of a steady flow of incoming orders but, at the same time, I believe you now have some idea where you should have the best opportunity for sales and should start concentrating on these areas.

Also, I recognize your personnel problem and how it relates to the handling of both letter and telephone inquiries -- the need for determining little details of application before intelligent quotes can be made. However, as always, I strongly feel that the sophisticated products, such as yours, require considerable face-to-face customer contact where your confidence and assurance rubs off on him and you can obtain a far more accurate assessment of his true potential. You can see what's going on in his shop and he will talk more freely face-to-face than he will over the phone or in a letter.

With the above in mind, I understand you will use one week each month for travel into selected areas to call on not only present customers and prospects but to do a little fishing for new ones and also manufacturers reps.

During your absence, Bob can log both telephone and letter inquiries which he could relate to you when you call in once or twice during the trip. This arrangement will permit you to make any necessary immediate follow-up before returning to the office.

Last -- new products.

I was extremely pleased that you brought up the subject because I was going to if you had not.

You had briefly mentioned the comparator in your quarter report. Repeat this in your program -- tying it in with your total new product program.

I strongly encourage you to proceed promptly with the redesigned contacting encoder. Show me the out-of-pocket cost to get it to market -- the cost savings -- the increased profit margin and the reduced customer price. Don't forget the other benefits to both you and the customer -- how you can provide CW and CCW inputs with identical components and that this design now permits the customer to service his units due to the plug-in circuit boards.

I believe you mis-read the Board's attitude when you presented the working model of the redesigned encoder. However, by presenting it as part of this Year's program, you will get a definitive reaction.

You should also include the modified read-out device since it also presents cost savings, improved profit margins together with reduced prices to the customer.

Possibly you should include certain peripheral equipment which would make it easier for the customer to apply your encoder.

(continued)

EXHIBIT 15

FROM: TWIN DISC, INCORPORATED

SHEET NO. 3

TO: LEM Instrument Corporation

DATE 7/24/72

I understand that you intend to give the clutch and brake lines a little more attention, too.

In my absence, send your communications to me through Mrs. Evie Burza at Racine since she knows my whereabouts at all times.

Good luck, Frank. Maybe this is the year we will get our breaks!

Sincerely,

TWIN DISC, INCORPORATED

Wilton B. Gibson
Consultant

WBG:eb

EXHIBIT 16 - Report to LEM, dated Aug. 11, 1972
(Introduced p. 97)

LEM INSTRUMENT CORPORATION
20 SARAH DRIVE • FARMINGDALE, NEW YORK 11735 • TEL 516 293-7240

11 August, 1972

TO THE BOARD OF DIRECTORS :

Mr. John H. Batten
Mr. Donald E. Beaton
Mr. Wilton B. Gibson
Mr. Robert T. Howell
Mr. Robert A. Everett

SUBJECT: Report for July 1972

Sales
Sales for the month of July were $2,830 which, though low, compares favorably with July 1971 sales of $1,485. Low level of sales for this time of year reflects the effects of planning for the vacation shutdowns at our customers' plants.

New Customers & Orders
New customers who placed orders this past month were Zygo Corp. and Link Engineering. Zygo manufactures process photography equipment while Link manufactures various kinds of test equipment. Both have follow-on potential.

New Product Literature
A new data sheet describing our recently developed Model DCM-270 comparators is attached. These devices are designed to facilitate the application of our encoders to a wide range of digitally controlled machines. We have already sold 7 units and have released a new product announcement to the technical press.

Customer Survey
The survey letter resulted in one more reply last month bringing the total to 4. This last response came from a prospect to whom we quoted last October. It is highly favorable and promises an order is forthcoming.

Sales Reps
This past month, I signed a sales rep contract with Reynolds & Assoc. an 8 man organization for the states of Florida, Georgia, Alabama, Tennessee, Mississippi, North Carolina & South Carolina. Additional territories are being negotiated at present with a number of reps.

. . . . continued

FROM: LEM INSTRUMENT CORPORATION

TO: THE BOARD OF DIRECTORS

DATE 11 August 1972

Budget

Owing to Bob Everett's recent vacation absence and my own imminent one (next 2 weeks), the preparation of a budget for the new fiscal year has been delayed. It will be prepared and submitted after my return.

Financials

Financial statements as at July 31, 1972 are attached. Inasmuch as we have not yet received a report from Lybrand, these do not reflect any recommended adjustments.

F. Loveli

EXHIBIT 16

BALANCE SHEET AS AT JULY 31, 1972

ASSETS		
Cash in bank	$ 7,556.77	
Petty cash	98.03	
Accounts receivable-trade	3,027.91	
Accounts receivable-deposit	875.00	
Accounts receivable-parent	79,430.79	
Inventories	54,018.75	
Prepaid insurance	392.00	
Total current assets		$145,399.25
Machinery and equipment	22,263.76	
Less: Accumulated depreciation	12,792.95	
		9,470.81
Patent		1.00
Deferred research and development		88,419.01
		$243,290.07
LIABILITIES		
Accounts payable	2,695.94	
Accrued liabilities	5,817.16	
Total current liabilities		8,513.10
Long-term debt		137,500.00
Deferred Federal income taxes		18,651.50
EQUITY		
Common stock	312,620.00	
Paid-in surplus	21,641.50	
Deficit	255,636.03	
		78,625.47
		$243,290.07

STATEMENT OF LOSS
ONE MONTH ENDED JULY 31, 1972

Sales	$2,830.00
Cost of sales	2,490.00
Gross margin	340.00
Expenses:	
Administrative	3.00
Advertising	106.15
Salaries & benefits	866.96
Taxes	-
Interest	630.00
Rent	310.00
Utilities	105.69
Depreciation	227.22
Insurance	272.00
Factory	154.34
Travel	349.97
Freight	2.56
Research	2,500.00
Net Loss	$5,187.89

EXH. 17 - Report dated Sept. 15, 1972
(Introduced at p. 97)

INSTRUMENT CORPORATION
20 SQUARE DRIVE - FARMINGDALE, NEW YORK 11735 • TEL: 516 293-7210

15 September 1972

TO THE BOARD OF DIRECTORS:

Mr. John H. Batten
Mr. Donald E. Beaton
Mr. Wilton B. Gibson
Mr. Robert T. Howell
Mr. Robert A. Everett

SUBJECT: Report for August 1972

Sales

Sales for the month of August were $3,500 bringing sales for the first 2 months of this fiscal year to $6,330. As at the end of August 1971, total sales were $8,600 largely due to an order from PAR Systems which is due for reneat, but which has not yet been released to us. Release is expected within 60 days and will improve our overall sales situation considerably.

Customers & Orders

No new (not previously sold to) customers placed orders during August.

Customer Survey

The survey letter brought 3 more replies this past month for a total of 7. One informed us that our contact was no longer with the company and the other 2 were favorable.

Sales Reps

I recently reached agreement with Ray Lawson Associates to act as our sales representatives in Eastern Penn., Southern New Jersey, Delaware & Maryland. Mr. Lawson is an experienced rep who has sold encoders and clutches before.

New Product Development

We have resumed the development of the improved, pancake style encoder which I demonstrated to the Board some months ago and will continue as the demands of direct order work allow. My target is to reduce encoder manufacturing costs at least 30% and, at the same time, greatly facilitate product maintenance and repair

. . . continued

EXHIBIT 17 597

FROM IBM INSTRUMENT CORPORATION SHEET NO. 2

TO THE BOARD OF DIRECTORS DATE 15 Sept. 1972

Financials

Financial statements as at 31 August 1972 will be forwarded as soon as received from our accountant. Jim Costello is moving to another state and I will have to make arrangements with someone else to do our accounts.

F. Lowell

F. .Lowell

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Part of EXHIBIT 18 - (5 Letters from Twin Disc Incorporated)
(Introduced at page 101)

RACINE, WISCONSIN
53403 • U. S. A.
TELEPHONE
(414) 634 - 1981

TWIN DISC
INCORPORATED

CABLE ADDRESS
"TWINCO"
TWX 910 - 271-2384
TELEX 02 - 6737

ADMINISTRATIVE OFFICES

May 31, 1968

Mr. Frank Lowell
LEM Instrument Company
20 Sarah Drive
Farmingdale, New York 11735

Dear Frank:

I attach a copy of a quarterly notice which comes out of our Personnel Department.

Under title No. 2 you will note the cost of living has gone up from the 34.6% that it has been for the last quarter, to 35.4%.

This will be the same type of notice that will be sent to you on a quarterly basis.

Very truly yours,

TWIN DISC, INCORPORATED

RTH:jj

Attachment

I still don't know what commitments Charlie Shepard & Booth & Co has made for me in N.Y.C. John & I definately want to get to Farmingdale. I'll let Jehone when I know more.

RH

Form 670

EXHIBIT 20 - Letter dated June 25, 1969 (Page 105)

TWIN DISC, INCORPORATED

1310 Preston Street

Rockford, Illinois 61101

WILTON B. GIBSON

VICE PRESIDENT – CORPORATE DEVELOPMENT

25 June 1969

Mr. Richard P. McGuire
P. O. Box 337
Racine, Wisconsin 53401

Dear Dick:

Thank you for your letter of 17 June and the enclosed copy of your file on the Key Man insurance program for LEM.

I had a very pleasant talk with Frank Lowell on this subject and can assure you that he will complete the program application in due course. However, it probably will not be before the end of the fiscal year.

My recommendation is that you let Frank determine the timing.

LEM is being operated as a profit center. Frank, as president, is charged with the responsibility for the operation.

The operation to date is not up to Frank's expectations and he feels very strongly that this is an operating cost or fringe benefit that can be postponed for the time being.

He and Bob Everett both appreciate the benefits to them of the Key Man program but feel that they must first bake the cake before they can apply the icing.

Kindest personal regards.

Sincerely,
TWIN DISC, INC.

Wilton B. Gibson

WBG/mjr

cc: J. H. Batten
R. T. Howell
Frank Lowell

EXHIBIT 23 - Findings of Fact and Decision of Dept. of Labor (Page 213)

NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE REFERENCE SECTION
500 EIGHTH AVENUE
NEW YORK, N. Y. 10018

AARON A. [illegible]
SENIOR REFEREE

IRVING WIENER
SENIOR REFEREE

DECISION AND NOTICE OF DECISION

In the Matter of:

Joseph Samuel
243 Garden Street
Westbury, New York 11590

Referee # 29905-71

S.S. # 101-20-8114

DECISION MAILED AND DULY FILED IN THE DEPARTMENT OF LABOR ON OCTOBER 5, 1971

Local Office # 60
Division of Employment
301 West Old Country Road
Hicksville, New York 11801

Lem Instrument Corp.
20 Sarah Drive
Farmingdale, New York 11735

FINDINGS OF FACT: A hearing was held at which claimant and a representative of the employer appeared and testified. A statement was submitted on behalf of the Industrial Commissioner in lieu of an appearance.

By initial determination claimant, an electrical engineer, was disqualified from benefits effective June 19, 1971 for voluntary leaving of employment without good cause.

Claimant worked on the job in question for about two and a half years until June 18, 1971. His salary was $250 per week. In about the middle of May 1971 the president of the company criticized claimant to the vice president. Claimant overheard the conversation and got into a heated argument with the president. As a result of that argument, he was discharged in the middle of May. Four days after his discharge in May, the vice president of the company contacted claimant and asked him to return to work. Claimant agreed to do so on a temporary basis to finish up the job he had been working on when he was discharged. He then returned to work and continued working for about one month until June 18. By about June 15, claimant and the president of the company had become amicable again and the president tried to persuade claimant to remain on the job on a permanent basis but claimant made no commitment one way or the other. On June 18, claimant notified the employer that he was leaving the employment that day because he had made plans to form a new business with a view to engage in self employment. Actually, claimant did not have definite plans to engage in self employment and he remained unemployed for about two months after leaving his job on June 18. At the time claimant quit on June 18, he had not yet finished the job on which he had been working. He knew when he quit on June 18 that the employer was willing to retain him on a permanent basis.

OPINION: Claimant quit his job on June 18 for personal rather than compelling reasons. At the time he quit on June 18, his relationship with the president of the company had become congenial, and he knew that he could continue on the job on a permanent basis if he desired to do so. It is significant at the time he quit the job on June 18, he did not have a definite promise of employment elsewhere. His ensuing unemployment was of his own making and he was therefore correctly disqualified from benefits for voluntary leaving of employment without good cause.

DECISION: The initial determination is sustained.

/s/ SALVATORE A. LANDI

EXHIBIT 24 - Letter re LEM Financing Requirements (Page 218)

X

20 May 1970

Mr. John H. Batten
Mr. R. T. Howell
Mr. D. E. Beaton

LEM INSTRUMENT CORPORATION FINANCING REQUIREMENTS:

15 May 1970 - 30 June 1970 --	$ 10,000.00
1 July 1970 -30 June 1971 --	222,265.00
	$232.265.00

Ref.: WBG Memo 12 May 1970

It is recommended that the Board of Directors for Twin Disc be requested to authorize the full amount of funding indicated above as required through the fiscal year ending 30 June 1971 when it is estimated that LEM will have attained the break-even point.

The basis for my recommendation is the current status of the shaft encoder development.

A brief review of LEM's history may place their current situation in better perspective.

Some four and one-half years ago, prior to Twin Disc entering the picture, the urgency of the military and space programs diverted LEM from their planned product line and caused them to become a one product company with essentially one market.

We were fully aware of this situation at the time of purchase two years ago this coming July, but we were also aware of their other planned products which included the shaft encoder.

The demise of the space and military programs which none of us expected two years ago caused LEM to return to their encoder development.

A patent application was filed on 2 October 1969 after a thorough search indicated we had valid claims.

It is extremely important to realize that the patent claims relate to the "logic circuitry" which is applicable to all three types of shaft encoders -- contacting brush, magnetic and optical. It is not confined to the contacting brush type encoder which LEM chose to first develop.

[continued]

LEM INSTRUMENT CORPORATION FINANCING REQUIREMENTS — 20 May 70

The reason LEM chose to first develop the contacting brush type encoder is because it adequately satisfies the bulk of the market requirements and is the lowest cost unit of the three. It is estimated to cover 60 percent of the unit market.

The remaining 40 percent of the unit market use either the magnetic or optical type encoder.

The magnetic encoder is the next most expensive type, is the most rugged and satisfies hostile environmental requirements.

The optical encoder is the most expensive, the most delicate and satisfies the higher resolution requirements.

LEM can build all three, using their logic circuitry to advantage through improved performance, longer life, smaller size and at lower manufactured cost.

The shaft encoder is essentially in its infancy in that it is the sensor providing the "feed-back" that closes the loop in computer controlled machinery. Incidentally, LEM has already quoted on a simple control device to match their encoder. This is a device in which the machine operator can set a dimension, actuate the machine and when the encoder matches the "set point" the machine is locked in.

The 15 May issue of the N.Y. Wall Street Journal reported Lear Siegler, Inc. receiving a $9.7 million contract from Data Input Services, Derry, N.H. to manufacture digital encoders for commercial data processing systems to be delivered over the next eighteen months.

This is only a partial indication of the size of the market.

Another major volume market, currently in the test stage, is automatic meter reading by a computer in the central office of power, gas and water companies.

In this system, the drive mechanism for the dials on your present meter would drive the encoder fitted with a logic code disc compatible with the computer in the central office of the power, gas or water company. The two would be connected over A.T. & T. long distance lines. At billing time, the computer consecutively dials each customer, reads the meter and prepares the bill.

Automatic water meter reading tests conducted for nearly one and a half years in twonty homes at Belvidere, Illinois and for a little over a month in seventeen homes in Holmdel Township, N.J. have been highly successful according to Mr. E. A. House, Manager of Program Development, Badger Meter Mfg. Co., South Milwaukee.

[continued]

The big unknown, regarding our patent application, is the possibility of similar applications in process at the time of our search and therefore not discovered.

I believe we must assume that our application will be granted providing us with a valuable asset.

Prototypes for two of the eight most popular models have been built to prove the logic circuitry and mechanical functioning -- the 10,000 count and the 360 count models.

Production redesigns, to reduce manufacturing costs, have been completed and actual quotations received for lot purchases of the logic discs including tooling. Accurate manufacturing costs are available.

These figures have been used in our budgetary figures attached.

Delivery times quoted by suppliers are compatible with delivery requirements for encoders to customers. Therefore, commitment of funds for tooling and the purchase of logic discs will not be made until after receipt of customer purchase order.

The early response to our recent advertising has been unusually high and encouraging. Approximately one thousand inquiries have been received and bulletins mailed in response.

Thirteen written requests for quotations have been received and quoted. Our sales estimates are based upon this early response and knowledge of the market potential.

Sincerely,

W. B. Gibson

eb

Attach.

EXHIBIT 25 Letter dated June 18, 1970 (Page 219)

TWIN DISC, INCORPORATED

TWIN DISC

CABLE ADDRESS "TWINCO" RACINE, WISCONSIN 53403, U. S. A.

JOHN H. BATTEN
PRESIDENT

June 18, 1970

Mr. Frank Lowell
LEM Instrument Corporation
20 Sarah Drive
Farmingdale, New York 11735

Dear Frank:

I am encouraged to learn that the first order has now been received for an Encoder system.

I note the changes to the balance sheet and believe that these changes more properly state our situation.

Congratulations and best regards.

Sincerely,

John H. Batten

JHB:AJ

EXHIBIT 26 - Inter-Office Communication (Introduced at page 219)

DEFT's CHTDD Form 11
5/14/73 NP

Pltf Ex. 13 for ID 5/2-5/13-1976 DS

INTER-OFFICE COMMUNICATION

TWIN DISC, INCORPORATED
Racine, Wisconsin

4 November 1970

TO: Mr. John H. Batten cc: Mr. R. T. Howell
Mr. D. E. Beaton

Blind copies:
Frank Lowell ✓
Gordon Danhof

SUBJECT: LEM

Ref.: Your 2 November 1970 memo

Yes, I am encouraged by the class of inquiries being received, orders on the books and the enthusiasm exhibited by Gordon Danhof in particular as well as by Frank Lowell.

Our target is the sale of 200 systems at $1,000 each or $200,000 by 30 June 1971. The system consists of an encoder plus one readout, as designed and tooled, and exhibited in the display at the last Annual Stockholders Meeting.

We fully recognize our problem of new product introduction and customer prototype testing prior to entry of repeat orders, but this remains our target. Our problem with the source for the discs has recently been resolved: LEM now has an adequate supply of apparently good quality discs and we do not anticipate further problems here.

Although Gordon Danhof is uncovering a goodly number of interesting requirements beyond the design capability of our presently tooled encoder, our plan is to tackle only those that can be accommodated by minor modification. He will continue to catalogue the remaining inquiries to help provide possible future direction. Gordon is a sufficiently experienced sales engineer to understand LEM's problems and will not let himself become frustrated by Frank's necessary but temporary rejections.

Actual shipments to date since 1 July 1970 should approach $3,500 and will show up on the next statement ending October. These consist of several small orders from Westinghouse for brakes on the Mark 45 torpedo totaling approximately $1,000 and one encoder system exceeding $2,000 to Kaiser Aluminum, Heath, Ohio for controlling the cut-off on a slab machine. A quantity of from 10-12 additional units will be required but it will be late August before we anticipate a repeat or quantity order.

[continued]

EXHIBIT 26

LEM

Westinghouse have been awarded the contract on the Mark 48 torpedo and we have quoted on several quantities up to 300 at $70 each. We can only guess "when" and for "what quantity" at this stage. See tabulation attached.

We have actual orders in-house which will show as sales upon shipment.

The U.S. Navy, Bremerton, Washington has ordered 98 brakes for the Mark 45 torpedo at $80 each or $7,480.

Western Electric, Chicago has ordered a $1,500 encoder system that will be shipped this week. It controls the length of cable wound on a reel and we anticipate an additional order for two more before 30 June 1971 or $3,000. A total of twelve is required.

Butler Manufacturing Co., Kansas City has ordered an encoder system for $1,043 which indexes and controls repeated lengths of material. This is their Research Center for a number of plants. Between 12 and 15 systems will be required but we do not anticipate repeat orders prior to 30 June.

The above is typical and shows sales and firm orders totaling $13,525.

The attached tabulation recaps the above material and includes only 25% of actual quotations considered to be most likely prospects for the current fiscal year.

The three columns under "Pilot Unit Sales" and "Unit Sales by 6/30/71" represent our "Pessimistic", "Probable" and "Optimistic" forecasts. We have used the "Probable" column in the second group to arrive at dollar sales for fiscal 1970-1971.

Just as it is with any forecast, some of the customers listed will fail us in part or totally, but new prospects not yet contacted will fill the gap.

Bill
W. B. Gibson

eb

[The tabulation recaps above referred to are not being reproduced herein]

EXHIBIT 27 - Letter dated February 18, 1971 (Introduced Page 391)

TWIN DISC INCORPORATED

INTER-OFFICE COMMUNICATION

Racine [X] _____ Branch

W.F.&G.

PERSONAL & CONFIDENTIAL

Date February 18, 1971

To: Mr. W. B. Gibson
cc: Mr. R. G. DeLong
Mr. R. T. Howell

Subject: LEM INSTRUMENT CORPORATION
REF: R. G. DeLong's Memo 2-16-71

As you will recall I made this same proposal to you and to Frank Lowell one year ago, when Frank Lowell felt he had no particular expertise in electronic controls. The situation may or may not have now changed.

Inasmuch as LEM continues to fall dramatically below its forecasts, I have to assume that we are not far from deciding to sell LEM pursuant to the terms of the contract, at which time it would also be logical to release Danhof.

I wish to formalize our plans in these respects as part of our overall program of budget reduction, facing a full year of sharply reduced Twin Disc operations. You will admit that our LEM forecasts to date have been entirely misleading.

I should like your up-to-date and doubtless similar forecast on LEM and your own recommendations in connection therewith.

John H. Batten

JHB:AJ

EXHIBIT 28 - Report (Introduced at page 393)

PERSONAL AND CONFIDENTIAL

INTER-OFFICE COMMUNICATION

W E & G

TWIN DISC, INCORPORATED
Racine, Wisconsin

October 7, 1971

TO: Mr. John H. Batten

cc: Mr. W. B. Gibson
Mr. R. T. Howell
Mr. D. E. Beaton
Mr. R. S. Gibbs

SUBJECT: LEM DIVESTITURE STRATEGY

RECOMMENDATION:

Messrs. Gibson, Howell, Gibbs and Batten met on Wednesday, October 6 to formulate a final recommendation on the proposed divestiture of LEM. Having reviewed the various alternatives (see the "Decision Tree" attached), it was concluded that the immediate divestiture of LEM would have a substantial adverse effect on 1972 Twin Disc earnings. This would come at a time when there is a degree of uncertainty about profits from our normal operations in the coming year. Given this potentially adverse impact on our fiscal 72 earnings, it was the consensus of the meeting that Twin Disc should postpone the decision to divest itself of LEM until the end of this fiscal year. It is proposed that at that time another review be undertaken to see if our corporate earnings could absorb the losses incurred with the LEM divestiture. In the interim, it is recommended that Twin Disc make certain operating changes regarding its control of LEM. It is suggested that a system of management by objectives be instituted and that Frank Lowell be held to account for meeting objectives set down by the Board of Directors. It is further recommended that the Board of Directors undertake to document the managerial capabilities of LEM management in general and Frank Lowell in particular. This would serve to build up evidence which could be used at a later date should it be necessary to enter litigation in the disposal of LEM.

DISCUSSION:

It is our intention here to briefly review the alternative courses of action that are open to Twin Disc regarding the divestiture of LEM.

In a letter to Bob Howell dated September 24 Lybrand, Ross Bros. & Montgomery recommends any disposition of LEM be handled as a sale of assets with a subsequent liquidation of LEM as opposed to the sale of LEM stock. This approach would have the most advantages, tax benefits for Twin Disc.

(continued)

Due to contractural requirements, Twin Disc must give six months notice to Lowell and Everett before it can dispose of LEM or its assets. Rather than try to look for an outside customer, thereby creating a greater delay, it is envisioned that an offer would be made by Twin Disc to LEM to buy the assets. While the initial offer would be to exchange LEM's assets for the 6,624 shares of Twin Disc stock that Lowell and Everett own. It is conceivable that the purchase price could go as low as $1. This offer could be made now or at some future date.

If the offer were made now, it would either be accepted by Lowell and Everett or refused. If the offer were accepted at an assumed purchase price of $50,000 in this instance, the affect on 1972 Twin Disc earnings would be a $94,000 loss. It is unlikely that Lowell and Everett would accept this type of an offer because its acceptance would bring about the termination of the lucrative employment contracts.

It is more likely that any Twin Disc offer to sell LEM to Lowell and Everett would be refused, in which case we would have to confront the question of the employment contracts. At this point we would have the choice of entering litigation or attempting to settle out of court. If we were to litigate, it was agreed that it would be to Twin Disc's benefit to take the initiative and enter a suit in Federal Court in Milwaukee under Section 10B (5) of the Securities Act as well as try to obtain a Declaratory Judgment. In the former case we would have to prove that Lowell and Everett made misrepresentations about LEM, its customers and its future. To win a Declaratory Judgment we would have to prove that Lowell had not carried out his management duties diligently. If Twin Disc doesn't take the initiative to enter suit, it is almost certain that Lowell will take us to court in an attempt to get the highest possible judgment from us.

To go the litigation route would require from one and one-half years to three years in court at a cost of $10-$25,000. The affect on 1972 Twin Disc earnings would be a $67,500 loss, and more important we would lose control over the timing of the major loss associated with the employment contracts.

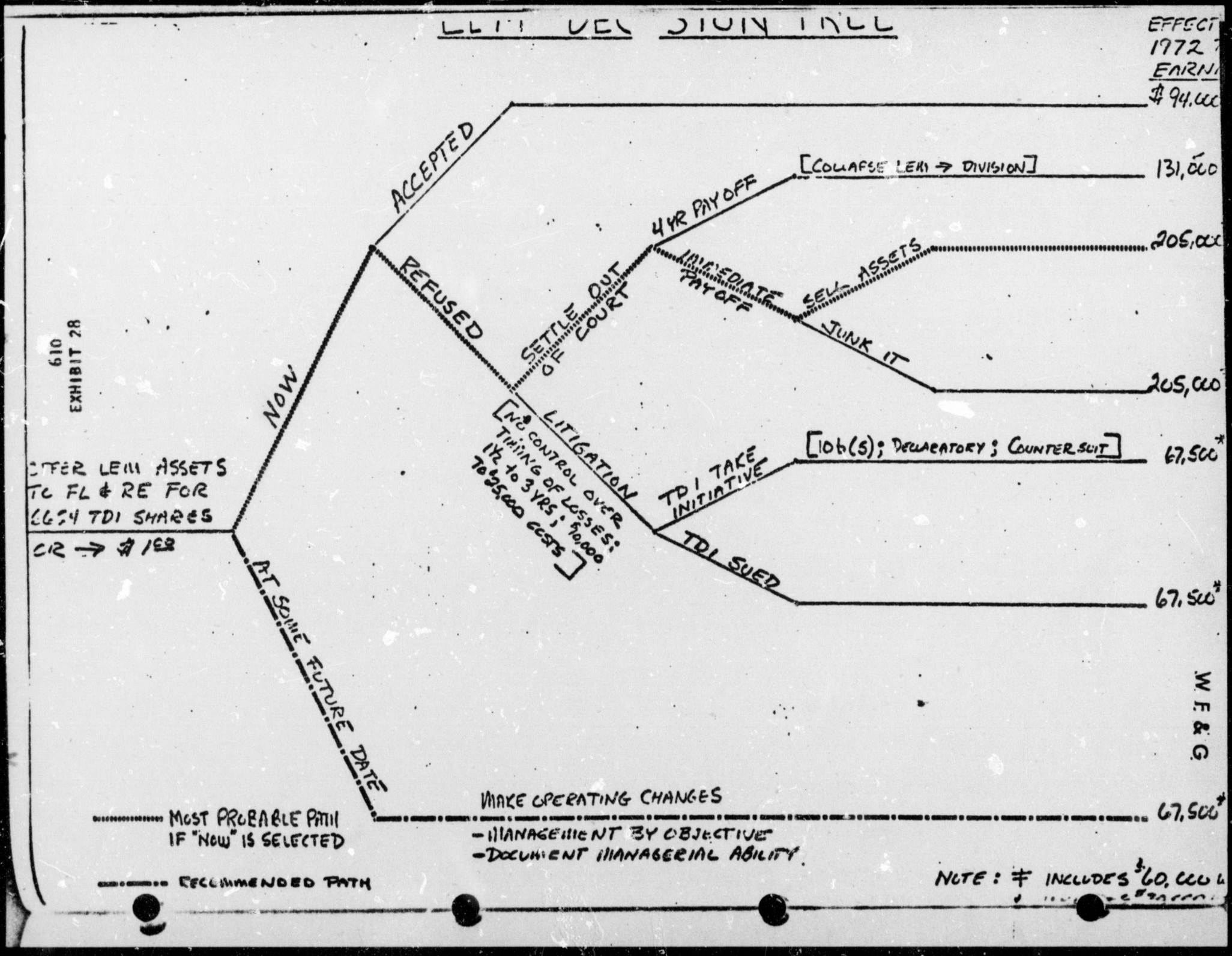
It is more probable that we would try to settle the employment contracts out of court, in which case the payment would be made immediately or over the four year duration of the contract. Afterwards the assets could be sold or junked. The four-year payoff would cost us $131,000 in 1972 earnings, while the more likely immediate payoff could cost us $205,000 in losses.

Consequently, in summary, if we were to make an offer to Lowell and Everett in the near future, we on the one hand face a prospect of incurring substantial losses which would have to be charged against 1972 earnings, or on the other hand take on the long drawn out court fight, which conceivably could run as long the employment contracts themselves, and at the same time lose control over when we may want to take the losses associated with the contract judgments. It is for these reasons that we recommend against the disposition of LEM at the present time and further recommend that the question be raised again by next July in light of the business forecast for fiscal 1973.

Should you have any further questions regarding this recommendation, I will be happy to meet with you at your convenience.

Michael E. Batten

eb


LEM VS JOIN INC
EFFECT
1972
EARN
$94,000
131,000
206,000
205,000
67,500*
67,500*
67,500*
610
EXHIBIT 28
NOW
ACCEPTED
REFUSED
4 YR PAY OFF
[COLLAPSE LEM → DIVISION]
IMMEDIATE PAYOFF
SELL ASSETS
JUNK IT
SETTLE OUT OF COURT
LITIGATION
[No CONTROL OVER TIMING OF LOSSES: 1½ TO 3 YRS; $40,000 TO $75,000 COSTS]
[10b(5); DECLARATORY; COUNTERSUIT]
TDI TAKE INITIATIVE
TDI SUED
AT SOME FUTURE DATE
MAKE OPERATING CHANGES
OTHER LEM ASSETS TO FL & RE FOR 66⅔ TDI SHARES
CIR → $182
MOST PROBABLE PATH IF "NOW" IS SELECTED
RECOMMENDED PATH
-MANAGEMENT BY OBJECTIVE
-DOCUMENT MANAGERIAL ABILITY
NOTE: $ INCLUDES $60,000
W.F.&G.

Farmingdale . Per phone when

#1

611
EXHIBIT 28

W E & G

AFTER TAX EFFECT ON 1972 TWIN DISC EARNINGS

CALCULATIONS

W F & G

(1) $94,000 = $34,000 liquidation loss
60,000 write off TDI books

W F & G

(2) $131,000 = $ 34,000 liquidation loss
30,000 writeoff TDI books
37,500 loss on 1972 LEM operations

(3) $205,000 = $145,000 liquidation & contract losses
60,000 writeoff TDI books

(4) $ 67,500 = $ 30,000 writeoff TDI books
37,500 loss on 1972 LEM operations

cc: J. H. Batten
R. T. Howell
Frank Lowell

612

EXHIBIT 29 - Memorandum re LEM status report
(Introduced page 459)

DEFT'S EXH (Y) FOR ID
4/6/73

LEM INSTRUMENT CORPORATION

20 SARAH DRIVE • FARMINGDALE, NEW YORK 11735 • TEL 516 293-7240

May 20, 1971

Mr. John H. Batten
Mr. R. T. Howell
Mr. D. E. Beaton
Mr. W. B. Gibson

Subject: LEM Status Report

Preliminary to our next board meeting on 2 June 1971, the following report is submitted for your consideration.

1. Sales

Sales to date have not reached the level projected at this time last year. Many of our prospects at that time have simply slowed down their development programs and therefor have postponed purchases. They do, however, in most cases remain good prospects. Some, such as Kaiser Aluminum, Western Electric, Butler Manufacturing, Grotnes Machine, PAR Systems, Idaho Nuclear Corp. and Barkley Dexter, have ordered encoder/display systems for evaluation and most certainly will repeat order as their programs ~~bei~~ begin moving faster. Even with customers, however, who had an "immediate" need, it has been our experience that several months elapse between need and receipt of an actual order. Filling the pipeline has consequently been slower than anticipated and has required repeated follow-up effort.

2. Quotations

In addition to the earlier, open quotes ~~xefex~~ referred to above, we have a considerable number of new ones with extremely good dollar value and potential for repeat business. Some among these are:

IIT Research	100 encoders	@ 498 each
Lockformer Corp	1 E/D system	@ 1,430 "
Bourns/CAI	250 clutches	@ 103 "
Lockheed M & S	5 E/D systems	@ 4,000 "
Datron Systems	40 E/D systems	@ 995 "
Litton Precision	960 clutches	@ 47 "
Verson Allsteel	2 E/D systems	@ 1,400 "
Scientific Atlanta	5 encoders	@ 890 "
I. W. Nash Co.	1 E/D system	@ 1,250 "
Cincinnati, Inc.	10 to 99 encoders	@ 825 "

...continued...

FROM LEM INSTRUMENT CORPORATION

TO Mr. John H. Batten
Mr. R. T. Howell
Mr. D E. Beaton
Mr. W. B. Gibson

DATE 20 May 1971

Drillmation, Inc.	4 E/D systems	@1,850 each
Gilbarco	100 encoders	@ 450 "
Grumman	3 E/D systems	@1,900 "
Amer. Red Cross	100 E/D systems	@1,250 "

All are quoted at competitive prices with substantial profit margin and I have high hopes for most of them.

3. Advertising and Publicity

We have been continuing our advertising and publicity program with committments for space ads through October 1971. Two additional product releases were recently issued and these, together with our series of ads, have resulted in approximately 3,000 requests for catalogs. So far this year, we have committed and spent about $10,000 for advertising and publicity.

4. Financial Results

Financials as at April 30, 1971 are attached. I regret being late again, but we still have not found a replacement for Jim Costello who is very busy these days.

Sincerely,

F. Lowell

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EXHIBIT 29

LEM INSTRUMENT CORPORATION
SUBSIDIARY OF TWIN DISC INCORPORATED
20 SARAH DRIVE • FARMINGDALE, NEW YORK 11735 • TEL: 516 293-7240

15 November 1971

TO THE BOARD OF DIRECTORS:

Mr. John H. Batten
Mr. Donald E. Beaton
Mr. Wilton B. Gibson
Mr. Robert T. Howell
Mr. Robert A. Everett

SUBJECT: Report of Recent Activities

Annual Plan

As requested by Mr. Gibson, I am preparing a general operating plan for the remainder of the current fiscal year and should have it completed within the next 10 days.

Sales and Orders

Total sales for the month of October were $1,059.00 bringing the total for 4 months to $11,339.00. While the total is well below our break-even of $32,000.00 for 4 months, it is well above last year's 4 month total of $5,891.00. Several orders now on the books will be shipped during November and we should come closer to projected break-even.

New Customers

New customers for encoders and displays are U.S. Navy, Bendix, Sandia Corp., and General Electric. Of these we have good prospects for repeats from Navy and Sandia within the next 90 days.

Sales Reps

Advertising for reps has resulted in a number of possibilities which are now being followed up with interviews. To make our line more attractive, we are planning to offer a controlled draw against commission arrangement as discussed during our last B/D meeting.

Advertising

A new 1/3 page ad has been designed and orders have been placed for this to run through June 1972 in accordance with previously approved budgeting.

. . . . continued

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EXHIBIT 29

LEM INSTRUMENT CORPORATION
SUBSIDIARY OF TWIN DISC INCORPORATED

SHEET NO. 2

THE BOARD OF DIRECTORS

DATE 15 Nov. 1971

Projects Status

rk on the new low-cost flat encoder has been temporarily put aside
ng to pressure of current orders. This project is about 50% completed
d will be resumed as schedul allows.

nthly Financials

tements as at 30 October 1971 are enclosed.

Sincerely,

F. Lowell

EXHIBIT 30 - Handwritten Letter re Claim for Unemployment Insurance
(Introduced Page 464)

New York State Department of Labor
Division of Employment

Subject: Claim for Unemployment Insurance
J. Joseph Samuel
S.S. Acct. No. 101-20-8114

We wish to amend our report of 13 July 1971 only to the extent of including additional facts for the purpose of establishing the sequence of events.

Mr. Samuel was dismissed "for cause" on 7 May 1971 as a result of his abusive language and threatening action.

He was requested to return to his job, at his former rate of pay, to complete a job assignment. He accepted and returned on 13 May 1971. ~~Job assignment completed on 15 June 1971.~~ On 15 June 1971 Mr. Samuel announced that he was leaving.

The above statements are in addition to and do not change or eliminate any statements given in our 13 July 1971 reply.

TWIN DISC INCORPORATED

EXHIBIT 31 - Memo re LEM Sales Program (Page 486)

ROCKFORD, ILLINOIS

EYES ONLY - CONFIDENTIAL

Date 4 April 1969

To: Frank Lowell

Subject: SALES PROGRAM
LEM INSTRUMENT CORPORATION

Dear Frank,

My mail this morning still did not contain a note from you relating to a revised Sales Call Program.

I sincerely hope you will be ready to present and discuss this subject at our Board Meeting on Tuesday 8 April.

Just to be sure we understand each other - the following is what I believed to be the action you were taking as a result of our conversation last Wednesday, 26 March:

1. Prepare a revised Sales and Profit Forecast through 30 June 1969 and additionaly through 31 December 1969. Actual results to be reviewed quarterly by you and me personally.

2. Prepare a list of prospective customers by market area showing tentative call schedule dates with the understanding that the travel schedule could be juggled to suit current situations at the time.

3. Make use of these initial prospective customer contacts to learn of manufacturers' representatives most acceptable to the customers in each area as a start of an alternate approach toward establishing your own representative organization.

Referring to (2) above, I suggest you attempt to make initial personal calls on key accounts in each of the six following market areas during the next eleven weeks before 30 June 1969:

New England
New York - New Jersey
Maryland
Florida
Iowa-Texas
California

Frank, please believe me when I say that these suggestions are personally aimed in a sincere effort to help you. My sales background tells me you just can't sell a technical product like yours from the home office or a catalog.

Sincerely,

W. R. Gilt...

DEF'S EXHIBIT B - Business Plan & Related Data (LEM)
(Introduced at page 131)

LEM INSTRUMENT CORPORATION
2 SARAH DRIVE
FARMINGDALE, NEW YORK 11735
TEL: 516 293-7240

BUSINESS PLAN

History of the Company

LEM Instrument Corporation was organized in November 1955 by a group who formerly held top management and staff positions with a leading clutch company and one of its now dissolved subsidiaries. The original intent of this group was to exploit several products in the microphotography field, but as a result of past successes, opportunities in the precision clutch and brake field presented themselves and LEM Instrument Corporation very quickly gained recognition as a quality supplier to the aerospace market. This was done without any formal sales effort and with very modest investment so that while the results (sales and profit therefrom) were spectacular, they were also limited. Recognizing this, the management embarked upon the development of a new, complete precision clutch and brake line, a digital shaft encoder line, and the original optical devices. Concurrently, an advertising and publicity program was begun and preparations were made for the establishment of a sales organization. The appended catalog describes the results of the technical effort. As a direct result of the advertising and publicity program, several thousand of these catalogs are at present in the hands of the very engineers and designers in industry who are in a position to specify the company's products. With the sales organization currently being built, the company will greatly benefit from this "groundwork".

Having come this far, the company finds that its capital resources are inadequate for the very ambitious, but well conceived plans for explosive growth. Desiring rapid growth in preference to "bootstrapping", the management has decided to seek additional equity financing. Since the demand for the company's products is at an all-time high and shows every sign of increasing significantly, additional resources are needed now.

DEF'S EXHIBIT B

* * * * * * * * * * * * *

LEM INSTRUMENT CORPORATION

20 SARAH DRIVE
FARMINGDALE, NEW YORK 11735
TEL: 516 293-7240

5. Sales Potential

The expansion of the market for precision clutches and brakes should produce sales of $300,000 in these products next year. The outstanding success of the company in this area is evidenced by its status as an approved supplier to leading space programs.

Additional substantial sales should result from continuation of the effort already begun with digital shaft encoders. The company is currently the only approved source of supply for a special type of encoder for the OAO program(orbiting astronomical observatory) and won this position in competition against several large manufacturers.

The development of a point-to-point, manual-input, positioning system utilizing encodre sensing is nearly completed and this product should prove attractive to the machine tool industry as well as to makers of scientific equipment.

The company has developed a line of unusual permanent magnet clutches which are intended for automatic control of tension without electric or other power. The high accuracy and extremely long life of these devices make them particularly useful to the film, filament, and textile industries as well as to the computer and tape drive manufacturers who are the company's customers for these items at present.

An automatic brightness control for use with existing microfilm camera installations has already been introduced and early market studies are extremely encouraging. The need for such equipment is great and presently offered devices are limited in performance and are relatively high priced. The LEM "Autodense" is readily adaptable to most cameras and can be profitably sold at attractive prices while offering the user a real solution to the exposure control problem which accounts for about 50% of the cost of microfilming.

Substantial sales potential exists in the area of government contract work at both the prime and subcontract levels. In preparation for such work, the company has been granted appropriate security clearances.

DEF'S EXHIBIT B

* * * * * * * * * * * * *

LEM INSTRUMENT CORPORATION

20 SARAH DRIVE
FARMINGDALE NEW YORK 11735
TEL. 516 293-7240

PROJECTED STATEMENT----1968

Sales of Products		$300,000
Cost of Sales		
Purchases & Materials	$60,000	
Labor	63,000	
Sales Commissions	15,000	
Other Selling Expenses	15,000	
Overhead Expenses	17,000	
Contingency	15,000	
	$187,000	
Gross Profit		113,000
G & A Expenses	55,000	
Depreciation	8,000	
	63,000	
Net Profit		$50,000

DEF'S EXHIBIT C - Financial Statements (Introduced page 140)

LEM INSTRUMENT CORPORATION
BALANCE SHEET, June 30, 1969
(Unaudited)

ASSETS

Current assets:		
Cash		$ 5,747.44
Accounts receivable, trade		449.68
Receivable from parent, income tax credit (Note A)		32,271.17
Inventory (Note B)		23,461.46
Prepaid insurance and deposits		1,555.00
Total current assets		63,484.75
Equipment, at cost	$22,125.63	
Less accumulated depreciation	3,870.07	18,255.56
Deferred research and development expenses, less amortization (Note C)		7,819.03
		$89,559.34

LIABILITIES

Current liabilities:		
Accounts payable		$ 1,271.87
Accrued liabilities		2,982.90
Total current liabilities		4,254.77
Notes payable to parent		75,000.00

CAPITAL

Capital stock, common, 200 shares authorized, 18 shares issued	$75,120.00	
Paid-in surplus	21,641.50	
Deficit	(86,456.93)	
Total capital		10,304.57
		$89,559.34

The notes to the financial statements are an integral part of this statement.

DEF'S EXHIBIT C

LEM INSTRUMENT CORPORATION
STATEMENT OF LOSS
for the year ended June 30, 1969
(Unaudited)

Net sales		$23,278.50
Cost of goods sold		23,953.69
		(675.19)
Operating expenses:		
Salaries and fringe benefits, less overhead applied to inventory	$33,632.87	
Rent and occupancy	3,237.64	
Utilities	1,443.27	
Amortization of deferred charges	1,303.17	
Factory supplies	1,410.01	
Depreciation	2,930.15	
Insurance	1,425.00	
Taxes	82.38	
Other administrative expenses	741.36	
Advertising	2,881.30	
Travel	2,835.78	
Shipping expense	122.33	52,045.26
		(52,720.45)
Interest expense		3,700.49
Net loss before federal income tax credit		(56,420.94)
Federal income tax credit (Note A)		32,271.17
Net loss		($24,149.77)

The notes to financial statements are an integral part of this statement.

DEF'S EXHIBIT C

LEM INSTRUMENT CORPORATION
STATEMENT OF (DEFICIT)
for the year ended June 30, 1969

Balance, June 30, 1968, as previously reported	($66,349.16)
Adjustments to the deficit to record inventory and tooling on hand at June 30, 1968, which was previously written off	4,042.00
Balance, June 30, 1968, as restated	(62,307.16)
Add net loss for the year ended June 30, 1969	(24,149.77)
Balance, June 30, 1969	($86,456.93)

The notes to financial statements are an integral part of this statement.

DEF'S EXHIBIT C

LEM INSTRUMENT CORPORATION
NOTES TO FINANCIAL STATEMENTS

A. Twin Disc, Incorporated, which is the parent company of LEM Instrument Corporation, will file a consolidated federal income tax return with its domestic subsidiaries for the year ended June 30, 1969. Consolidated federal income taxes will be reduced by the tax loss and investment credit applicable to LEM Instrument Corporation. This amount of $32,271.17 has been shown as a receivable on the balance sheet and a federal income tax credit on the statement of loss of LEM Instrument Corporation.

B. Inventory is valued at the lower of cost (first-in, first-out) or market. A large portion of the inventory relates to new products which have not been sold or produced in large quantities. As a result, this inventory is stated at approximately 90 percent of expected selling price and is based on management's judgment. Costs in excess of this carrying value have been charged against income.

C. The company is deferring costs that have been incurred in the development of a new product. These costs will be amortized on a straight-line basis so as to be completely amortized by June 30, 1975. The amount of such unamortized costs at June 30, 1969, was $7,819.03.

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DEF'S EXHIBIT G Memo Report of Recent Activities
Dated January 15, 1972 (Introduced p. 143)

EDN INSTRUMENT CORPORATION
[illegible] • FARMINGDALE, NEW YORK [illegible] • TEL [illegible]

15 January 1972

TO THE BOARD OF DIRECTORS:

Mr. John H. Batten
Mr. Donald E. Beaton
Mr. Wilton B. Gibson
Mr. Robert T. Howell
Mr. Robert A. Everett

SUBJECT: Report of Recent Activities

Operating Plan
An operating plan for the 8 months to end 30 June 1972 was prepared and submitted to the Board of Directors on 6 December 1971. This report is and subsequent ones will be keyed to the plan and any comparisons with projections refer to those outlined in the plan.

Sales and Orders
Sales for the month of December were $5,310.00 which compares favorably with the projected sales figure of $5,000.00. Total sales for 6 months were $20,178.20 showing some improvement over last year's 6 month total of $14,774.15. Still horrible, but getting better. Several orders on the books at the end of December, are scheduled for shipment in January.

New Customers
New customers for encoders are C. O. Porter, a woodworking machinery manufacturer and a research section of the National Institutes of Health.

Sales Reps
Recruitment of sales representatives is behind projections, but is underway and is still my highest priority task except for filling orders and quoting.

Advertising
Our new ad has appeared in EDN/EEE, an electronics magazine, and will continue to run in various other magazines through June, 1972.

continued

DEF'S EXHIBIT G

FROM: CEM INSTRUMENT CORPORATION

TO: THE BOARD OF DIRECTORS

SHEET NO. 2

DATE 15 Jan 1972

New Projects Status

No additional work was done on new projects during December.

Monthly Financials

Financial statements as at 31 December 1971 are attached. Items of particular note are Interest Expense and R&D Expense which together account for better than half the net loss for 6 months. All other expenses are running about normal.

Sincerely,

F. Lowell

DEF'S EXHIBIT H - Report (Introduced p. 146)

LEM INSTRUMENT CORPORATION

June 16, 1969

To: Mr. John P. Patten
Mr. F. T. Howell
Mr. W. Gibson
Mr. D. P. Beaton

Subject: Report of activities for the month of May 1969.

The following are considered to have special interest.

1. Sales

a) There were no new orders booked during May. This has been particularly disappointing since a number of previously quoted jobs were expected. Outstanding quotes to Bendix, Westinghouse, Itek, and Leach are still open, but have not yet been released.

b) In seeking out direct government contract work, the question of LEM's status as a small business has arisen. Since the definition of "small business" depends in part upon relationship with a parent company, our status is somewhat vague. However, I have gone ahead and have bid the Army on a procurement specifically set aside for small business and will resolve our status if we should prove to be the low bidder.

2. New Product Development

A disclosure of invention describing the new encoder has been sent to Fisher, Gilles with a request for patent search. Meanwhile, we are proceeding with the fabrication of a 10,000 count unit and an associated readout. I sure hope this idea is original, as we believe, since the performance of the prototype makes us very optimistic about the salability of such devices.

3. Financial Statements

a) Arrangements have been made for audit of our records by Lybrand, Ross Bros. & Montgomery on June 16 and 17.

b) Financials as at May 31, 1969 are attached.

F. Lowell

DEF'S EXHIBIT H

LEM INSTRUMENT CORPORATION
BALANCE SHEET AS AT
May 31, 1969

Assets:		
Cash	$14,034.20	
Accounts receivable	1,126.68	
Inventories	28,712.05	
Prepaid expenses	178.00	
Current assets		$44,050.93
Fixed assets	21,043.93	
Less: Accumulated depreciation	3,106.50	
		17,937.43
		$61,988.36
Liabilities and Shareholder's Deficiency		
Accounts payable	$1,193.68	
Accrued liabilities	2,490.07	
Accrued interest	664.06	
Current liabilities		$ 4,347.81
Long-term debt		75,000.00
Common stock	75,120.00	
Paid-in surplus	21,671.50	
Deficit	(114,150.95)	
Shareholder's deficiency		(17,359.45)
		$61,988.36

INCOME STATEMENT
ELEVEN MONTHS ENDED
May 31, 1969

	Current Mo.	Eleven Mo.
Sales	$ 30.00	$22,930.50
Cost of Sales	-	19,372.33
Gross Margin	30.00	3,558.17
Operating expenses:		
Salaries & benefits	8,711.73	32,892.27
Travel	612.67	2,560.68
Rent & occupancy	275.00	2,940.44
Utilities	38.95	1,234.03
Selling & advertising	90.12	2,738.36
Depreciation	248.55	2,236.28
Administration	49.64	650.39
Factory	74.18	1,355.10
Insurance	124.00	1,301.00
Shipping	--	122.33
Taxes	--	82.38
Interest	332.03	3,246.70
Net Loss	$10,526.87	$47,801.79

DEF'S EXHIBIT I - Report of recent activities through August 1969
(Introduced p. 184)

[redacted]

September 10, 1969

To: Mr. J. H. Batten
Mr. R. F. Howell
Mr. W. B. Gibson
Mr. D. E. Beaton

Subject: Report of recent activities through August 1969.

1. Sales and Reps

The sales picture continues to be disappointing. Opportunities to quote are not forthcoming at a satisfactory rate even though our advertising and publicity are generating large numbers of catalog requests. Somehow, I must solve the problem of finding qualified sales reps. I am convinced that this is the only practical way to sufficiently extend my own personal sales efforts. I am presently considering reps for the Ohio, Indiana, Kentucky area and replacements for the N. Y., N. J. area. In addition, Bill Gibson has suggested a possibility for the Illinois, Missouri area.

2. Cross Sales & Engineering Co.

As part of my program to find sales in the textile market, I recently spent some time with Harvey Forrest of Cross Sales. He very kindly arranged meetings with several senior engineering people at Roberts Co. in Sanford, N. C. and at Saco-Lowell in Clemons, S. C. . These 2 companies are the largest textile machinery manufacturers in the south. There was considerable interest in our permanent magnet clutches and brakes as tensioning devices. I do feel, however, that it will require additional contacts to generate business.

During the same trip, I called on several people at IBM in Raleigh, N. C. . This facility only manufactures input output terminals and therefore is not a good prospect.

3. Customer Contacts

Recent contacts have been made at Hamilton Standard Div. of United Aircraft in Windsor Locks, Conn., NCR in Dayton, Ohio, Xerox in Webster, N. Y., Teletype Corp. in Skokie, Ill. and Bell Labs in Whippany, N. J. Each of these customers has been quoted on prototype quantities for future programs.

... continued...

DEF'S EXH. 1

FROM Lowell INSTRUMENT CORPORATION 630

SHEET NO 2

DATE 10 Sep 69

TO: Mr. J. H. Batten
Mr. F. T. Howell
Mr. W. P. Gibson
Mr. D. E. Beaton

4. Encoder Development Project

We have now finalized the design of our encoder-display system and are writing the technical catalog necessary for the new product release and advertising program we plan to follow.

The patent application has been completed and should be filed within the next 2 weeks. As I understand the attorney, we will then be free to proceed with public announcements and demonstrations. Therefore, I will try to arrange with Bill Gibson to visit Earle Johnson of Giddings & Lewis and Ed McFarran of Gisholt shortly thereafter.

5. Financial Statements

Financials as at August 31, 1969 will follow early next week as soon as we rec them from Jim Costello who is back at work, but not yet fully recovered.

F. Lowell

Kearney + Trecker
Randall Gear
Jones Machine Co. engineering people
Clark Kirton Co.
Hill Horton Milling Co.

DEF EXH. 1

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LEM INSTRUMENT CORPORATION
BALANCE SHEET AS AT AUGUST 31, 1969

ASSETS:		
Cash in bank	$13,997.16	
Petty cash	23.16	
Accounts receivable	1,025.00	
Receivable from parent	32,271.17	
Inventories	29,172.97	
Prepaid insurance	342.00	
Total current assets		$ 76,831.46
Fixed assets	$22,125.63	
Less: Accumulated depreciation	4,393.33	
		17,732.30
Deferred research and development		[illegible]
		[illegible]
LIABILITIES AND SHAREHOLDER'S EQUITY:		
Accounts payable	$ 1,522.64	
Accrued liabilities	2,333.38	
Accrued interest payable	363.41	
Total current liabilities		$ 4,719.93
Long-term debt		87,500.00
Common stock	87,620.00	
Paid-in surplus	21,641.50	
Deficit	(92,288.37)	
Shareholder's equity		16,973.13
		$109,193.06

INCOME STATEMENT
TWO MONTHS ENDED AUGUST 31, 1969

	Mo. of Aug.	Two Mos.
Operating expenses:		
Salaries & benefits	-	$ 1,405.89
Travel	$ 379.68	673.45
Rent & occupancy	275.00	550.00
Utilities	99.27	245.07
Selling & advertising	-	551.61
Depreciation	261.63	523.26
Administrative	80.35	310.63
Factory	73.21	102.49
Insurance	163.29	257.36
Research	176.26	343.97
Total operating expenses	1,499.69	4,963.01
Interest expense	465.00	868.43
Net loss	$1,964.69	$5,831.44

Distribution: FL; RAE; TWN (4) ;

DEF EXH. I

MINUTES OF A MEETING OF THE BOARD OF DIRECTORS OF LEM INSTRUMENT CORP.

A meeting of the Board of Directors was held at the Pickwick Motor Inn, Woodbury, N. Y. on the 1st day of October, 1969.

The meeting was duly called to order by the Chairman.

The Secretary called the roll of the Directors and reported that all were present.

The Secretary then read the minutes of the meeting of the Board which had been held on the 22nd day of July, 1969.

Upon motions duly made, seconded and carried, it was

RESOLVED THAT the aforesaid minutes are approved as read; and it was further

RESOLVED THAT the financial statements for the year ended the 30th of June, 1969 as reported by Lybrand, Ross Bros. & Montgomery are hereby incorporated as part of the aforesaid minutes; and it was further

RESOLVED THAT the next meeting of the Board of Directors shall be held on the 12th day of December, 1969 at 1328 Racine Street, Racine, Wisconsin at 9:00 A. M..

The President then reported to the Board on the financial results of the business of the Corporation for the first two months of the current fiscal year and also described the progress made on the encoder development project since the previous meeting of the Board. The results and progress were found satisfactory to the Board.

There being no further business before the meeting, upon a motion duly made, seconded and carried, the meeting was adjourned.

Dated: 1st day of October, 1969.

Robert P. Gmelich

Secretary

Chairman

DEF EXH. J - Report of recent activities through October 1969

LEM INSTRUMENT CORPORATION

20 [illegible] DRIVE - FARMINGDALE [illegible]

Is the Def. J

November 17, 1969

To: Mr. J H. Batten
Mr. R. T. Howell
Mr. W B. Gibson
Mr. D F Beaton

Subject: Report of recent activities through October 1969.

1. Sales & Quotations

While the sales picture continues to be unsatisfactory, requests for quotation are developing. Perhaps the drought is over?

A new order has been received from Bendix for brakes to be used in a new aircraft actuator. LEM is listed on the Bendix drawing as sole source and all we need now is for Bendix to beat out their competition for a production run.

Various clutch and brake requirements have been quoted to Raytheon, Itek, Great Lakes Research Corp., and Westinghouse. G. E. was quoted on a special encoder (not our new type).

2. Encoder-Display Project

Sales samples of the encoder-display system have been built and are currently under test at LEM. The performance exceeds our expectations and should really attract attention from encoder users.

The sales brochure has been written and printed in preparation for an advertising and publicity program now being set up. We are now ready to make our announcements and look forward to the problems of filling orders.

3. Financial Statements

Financials as at October 31, 1969 will follow when received. Jim Costello promises them for the end of this week.

F. Lowell

Extracts from DEF. EXH. K - Employment Contract

EMPLOYMENT CONTRACT

Agreement made this 31st day of July, 1968 by and between LEM INSTRUMENT CORPORATION (hereinafter called "LEM"), a New York corporation, and ROBERT EVERETT (hereinafter called "Everett") of Merrick, New York,

WHEREAS, all of the capital stock of LEM is being acquired by TWIN DISC, INCORPORATED (hereinafter called "TWIN DISC"), a Wisconsin corporation, pursuant to a Stock Acquisition Agreement between TWIN DISC, Frank Lowell and Everett, and, which will result in LEM operating as the wholly owned subsidiary of TWIN DISC, and

WHEREAS, Everett has served as Vice-President of LEM, and LEM desires that his services continue to be available to LEM,

NOW, THEREFORE, in consideration of the mutual covenants, conditions and agreements herein, it is agreed as follows:

1. Everett is herewith employed by LEM as Vice-President of the Company for the term of seven (7) years beginning as of the date of this agreement, as long as he shall faithfully and diligently perform the duties of his employment and shall engage in no activities which are detrimental to the business interests of LEM or TWIN DISC.

DEF EXH. K

EVERETT agrees to devote his full time and his best efforts in the furtherance and interests of LEM. It is also anticipated that Everett will be elected as Director of the Corporation without additional compensation. Full time as used herein shall mean that time customarily devoted as Vice-President and Director, by other such executives with comparable education, training and experience who are employed by comparable firms.

2. LEM agrees to compensate Everett for his services hereunder on the following bases:

a. An annual salary of $20,000.00 payable in equal semi-monthly installments commencing April 18, 1968 with cost of living adjustments in the same manner as said cost of living adjustments are accorded to employes by TWIN DISC. Said salary includes a beginning base salary plus the applicable cost of living adjustment.

b. Annexed hereto as Schedule A is a forecast of sales and profits of LEM for the seven (7) year term of this contract. If the after-tax performance of LEM shall exceed the forecasted figures at the end of the third and fifth years of this agreement, the basic salary for each ensuing year otherwise provided under paragraph a. above, shall be proportionately increased, provided, however,

that no such increase shall result in the basic salary exceeding that of the average base salary for the top three chief engineers, [illegible] #19,500.

c. Annual bonuses determined by the Board of Directors of LEM out of after-tax profits in excess of twelve percent (12%) of LEM capital plus accumulated earnings without reduction for accumulated losses shall also be paid, provided that such bonus shall not exceed twenty percent (20%) of annual salary for the applicable period.

3. Everett acknowledges that as between Everett and LEM, LEM is the owner of and has the unencumbered right to use the ideas, designs, techniques and know-how presently used by it and developed by Everett for use in the production, sale, use or distribution of its products. Any invention, improvements or development made or originated by Everett at any time during the life of this agreement, and in any way relating to the matters aforesaid or to the manufacture or use of the company's products, shall be and remain the property of LEM and, if deemed appropriate to its protection by LEM, Everett shall execute such documents of assignment thereof as LEM may request without any provision for royalty or other payment of any kind. Further, Everett will, at

RACINE, WISCONSIN
53403 U. S. A.
TEL. (414) 634-1981

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DEF EXH. L - Letter dated August 28, 1972 (Introduced p. 175)

DEFT'S EXH (BB) FOR ID 4/6/73 MG

TWIN DISC
INCORPORATED

CABLE ADDRESS
"TWINCO"
TWX 910—271-2384
~~TELEX 02-0797~~
TELEX 26—4432

ADMINISTRATIVE OFFICES

August 28, 1972

Mr. Frank Lowell, President
LEM Instrument Corporation
20 Sarah Drive
Farmingdale, New York 11735

Dear Frank:

Your action in dismissing Bob Everett without either advising or consulting with the Board of Directors of LEM, W. B. Gibson, Chairman of the Board, or any representative of Twin Disc, sole shareholder of LEM, does require explanation.

Please submit to me, as President of the sole shareholder of LEM, a complete and detailed report of the circumstances, stating every act or occasion by Mr. Everett which, in your opinion, supports or justifies the action taken by you.

In this connection, I perhaps need not remind you that Mr. Everett's employment contract, the terms of which are known to you, is guaranteed by Twin Disc.

I want to have your reply by September 8th.

Please advise also why you left on vacation, as I understand you did, immediately after dismissing Mr. Everett, leaving the company's affairs without any apparent leadership.

Sincerely,

TWIN DISC, INCORPORATED

John H. Batten
President

JHB:AJ

DEF EXH. M - Letter dated August 31, 1972 (Introduced p. 176)

LEM INSTRUMENT CORPORATION
A SUBSIDIARY OF TWIN DISC INCORPORATED
20 SARAH DRIVE • FARMINGDALE, NEW YORK 11735 • TEL: 516 293-7240

31 August 1972

Mr. John H. Batten, President
Twin Disc, Incorporated
1328 Racine Street
Racine, Wisconsin 53403

Dear John:

In reply to your letter of 28 August 1972 regarding my dismissal of Bob Everett on 11 August 1972, I wish first to state that I fully realized the seriousness of this action as well as the prerogatives of the LEM Board of Directors, the authority of Mr. Gibson as Chairman of the Board and the interests of Twin Disc as sole shareholder of LEM. However, I also had in mind my responsibility to act as President of LEM and to do whatever is proper and necessary to safeguard our joint efforts to make LEM a successful business venture. Apart from my own pecuniary interest in such success, I understand that this responsibility conveys to me the full authority of the Board of Directors and of the sole shareholder to hire and dismiss employees as I believe would best serve our mutual concern. For this reason and owing to the emotion charged situation at the time, I did not think it necessary to consult the board members. I simply decided to solve a problem that has deeply troubled me for over a year and I dismissed Bob. After determining that our current work would proceed smoothly and after carefully instructing our engineer on how to handle any company affairs which might require immediate responses, I still cancelled my vacation plans. Instead, I remained at home maintaining telephone contact with our engineer on 14 August 1972 and 15 August 1972 and devoted the time to planning the further actions that would be best for all concerned. I did, of course, intend to advise the LEM Board and was about to do so when Bill Gibson contacted me on 15 August. Since he told me at that time that he and all the other members of the Board were aware of my action and further, that he had authorized Bob to return to work, I decided to postpone any further action until I could feel certain that calm reason would prevail over emotion.

It is not easy to lose a friend and a partner, so it pains me to recall the acts or occasions that led to my dismissing Bob, but I agree that explanation is in order.

. . . continued

FROM: LEM INSTRUMENT CORPORATION Def. Exh. M

TO: Mr. John H. Batten

DATE 31 August 1972

For over a year now, Bob has never put in a Saturday nor has he stayed past 4:30 P.M. regardless of the urgency of our workload. On the contrary, he has frequently left earlier than 4:30 without word and has been absent complete days without calling me or offering explanation upon his return. He has repeatedly refused to follow my direction saying that he will not permit me to question his expertise. He has incited other employees and very likely is responsible for my difficulties with Joe Samuel and Joe's successor. Bob has been publicly disrespectful and surly, loudly stating that I have no authority over him. Despite my constant efforts to stimulate him, he has deliberately refused to learn any electronics and remains essentially ignorant of our technology. The quality of his work as an assembler has declined and has led to customer complaints which he reacts to by blaming our designs or the customers' ineptness. Though his failure to keep track of our inventory results in parts shortages at critical times, he does not expedite corrective action as I request. He has been unwilling or unable to handle the simplest of telephone inquiries from customers. In summary, Bob has not developed as a manager capable of sharing the load sufficiently to allow me more time for planning and selling, but he has instead, lost those very qualities of pride in work, diligence, loyalty, willingness to learn and attention to details which made him a desirable associate during our earlier years together.

With the above in mind, I believe you can readily understand my reaction when Bob returned from his vacation on 7 August 1972 and again without a word of explanation, left by mid-afternoon on two days and lounged away a third day despite my urging that we try to complete certain tasks before I left for two weeks. On Friday morning, after waiting all week for him to package some catalog materials to be sent to our new reps, I asked Bob to get this done at once and received the reply "I don't mind helping you out, but if you don't like my way, do it yourself". When I pointed out that he had had all week to do this and other things which had gone undone as well, he responded with a torrent of abuse and invective. Unable to quell his unreasonable behaviour and my own rising irritation, I felt it time to call a halt and wrote a short note informing Bob of his dismissal for failure to perform his duties in a satisfactory manner. The immediate result was that he did not do as I requested and again left work early.

In retrospect, I believe I took the correct action at the time and that my next correct action would be to hire an experienced person to do the job I have expected of Bob. I have advertised in a local paper to determine the availability of qualified people and anticipate no difficulty in locating someone. However, since Bill Gibson has authorized Bob Everett to

. . . continued

FROM: LEM INSTRUMENT CORPORATION
SUBSIDIARY OF TWIN DISC, INCORPORATED

TO: Mr. John H. Batten

DATE 31 August 1972

return to work and we must consider the contractual obligations of LEM and Twin Disc, I will await further discussion before employing anyone.

Please be assured, John, that although this turn of events disturbs me greatly, I never have and never would leave the company's affairs without any leadership. I have put a great part of myself into LEM and am determined more than ever that this shall not have been wasted.

Sincerely,

F. Lowell
President

LEM Instrument Corporation

FL:wo

cc: Mr. W. B. Gibson

FROM LEM INSTRUMENT CORPORATION

TO The Board of Directors

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DEF EXH. R - Projected Sales and Profits (Introduced p. 193)

SHEET NO 5

DATE 29 Nov. 1971

D. Financial Plan

1. Projected Sales & Profit for 8 Months & 12 Months ending 30 June 1972

	Next 8 Mos.	All 12 Mos.
Sales	$ 121, 300	$ 132, 600
Operating Expenses		
Salaries & Wages	56, 000	85, 000
Overhead	27, 000	40, 000
Materials	16, 000	21, 000
	99, 000	146, 000
Profit (Loss) from Operations	22, 300	(13, 400)

2. Monthly Sales- Actual & Projected

	Actual	Projected	Cum
July 1971	1, 500		
Aug	7, 100		
Sept	1, 700		
Oct	1, 000		11,300
Nov		3, 500	14,800
Dec		5, 000	19,800
Jan 1972		6, 800	26,600
Feb		11, 000	37,600
Mar		16, 000	53,600
Apr		21, 000	74,600
May		27, 000	101,600
Jun		31, 000	132,600
	11, 300	121, 300	

DEF EXHIBIT S - Monthly Sales - 1968-1972 Fiscal Years - By Month
LEM INSTRUMENT CORP.

Jul 68	1,393
Aug 68	1,244
Sept 68	132
Oct 68	4,224
Nov 68	1,180
Dec 68	4,092
Jan 69	4,152
Feb 69	4,370
Mar 69	2,114
Apr 69	---
May 69	30
June 69	348
Jul 69	---
Aug 69	---
Sept 69	---
Oct 69	---
Nov 69	---
Dec 69	708
Jan 70	---
Feb 70	213
Mar 70	---
Apr 70	65
May 70	---
June 70	---
Jul 70	---
Aug 70	2,787
Sept 70	124
Oct 70	2,980
Nov 70	8,883
Dec 70	---
Jan 71	---
Feb 71	2,399
Mar 71	950
Apr 71	3,024
May 71	2,104
June 71	3,088
Jul 71	1,485
Aug 71	7,115
Sept 71	1,680
Oct 71	1,059
Nov 71	3,529
Dec 71	5,310
Jan 72	3,111
Feb 72	4,670
Mar 72	13,344
Apr 72	2,558
May 72	5,965
June 72	5,544
Jul 72	2,830
Aug 72	3,500
Sept 72	
Oct 72	

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EXHIBIT AA -Letter dated June 18, 1969

AA

LEM INSTRUMENT CORPORATION

20 SARAH DRIVE • FARMINGDALE, NEW YORK 11735 • TEL: 516 293-7240

June 18, 1969

Mr. Richard P. McGuire
Massachusetts Mutual Life Insurance Company
P.O. Box 337
Racine, Wisconsin 53401

Dear Dick:

We have carefully reviewed our benefits program here at LEM and I am sorry to inform you that we have decided not to proceed with life insurance coverage at this time.

Your efforts are greatly appreciated and hopefully, we will be contacting you in the near future to ask you to proceed.

Sincerely,

LEM Instrument Corporation

F. Lowell

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EXHIBIT EE - Letter dated May 27, 1970 (Introduced p. 223)

TWIN DISC, INCORPORATED

TWIN DISC

CABLE ADDRESS "TWINCO" RACINE, WISCONSIN 53403, U. S. A.

JOHN H. BATTEN
PRESIDENT

May 27, 1970

Mr. Frank Lowell
LEM Instrument Corporation
20 Sarah Drive
Farmingdale, New York 11735

Dear Frank:

I appreciate your note of May 21st. I have high hopes for your shaft encoder and trust you will now give it both barrels in the commercial markets.

Frank, I shall be truthful and tell you that it was not easy to get your financial support through our Board of Directors. We came the closest to having a "nay" vote in my experience, but only from one member of the Board.

This means we must show results in fiscal 1971.

Sincerely,

John H. Batten

JHB:AJ

378W

EXHIBIT II - Letter dated Sept. 3, 1972 (page 286)

LEM
SUBSIDIARY OF TWIN DISC INCORPORATED
20 SARAH DRIVE · FARMINGDALE, NEW YORK 11735 · TEL: 516 293-7240

WF&G

Sept. 3,1972

Mr. Wilton B. Gibson
Twin Disc Incorporated
1328 Racine St.
Racine Wisc. 53403

Dear Bill:

Just Another chapter to keep you informed on the happenings at LEM, as you have requested.

Lowell returned to work Monday and chose to ignore my presence all week. However, when he returned from lunch on Friday, he asked to see me in his office.

When I entered his office he became very abusive and said" You are a thief and a cheat. You removed the typewriter ribbon from the machine and read it. I wrote a confidential letter to John Batten and I want the ribbon returned!

I told Lowell that I had been typing purchase orders, the ribbon jammed (as it has done many times before) and I fixed it. I did not read the ribbon, I threw the old ribbon in the garbage and if he wanted it he could get it. He did Not.

I removed the tape from the garbage (which Bill and Arnold witnessed), took it into Frank's office and put it on his desk. He again became Loud and abusive and told me to take the tape and get out of his office or he would throw me out bodily or call the police??????

After a few more unpleasant verbal exchanges, I told Frank if this tape was so important I was going to give it to John Batten myself, I removed the tape from his desk and left the office. I have the tape in my possession now.

Well Bill, on Friday I was furious,however, now on Sunday morning as I sit home and am writing this to you, I can find the humor in this thing. Evidently Lowell's accusations would indicate that he has been wasting his time for four years reading typewriter ribbons.

I close now and look foward to seeing you in the near future.

Sincerely,
LEM Instrument Corp.

Robert A. Everett
Vice President

DEF'S EXH. LL - OPERATIONS PLAN (Introduced at page 349)

LEM INSTRUMENT CORPORATION
PARMINGDALE, NEW YORK

OPERATIONS PLAN FOR THE GROWTH OF LEM INSTRUMENT CORPORATION

I PURPOSE

With the infusion of additional resources, the accelerated development of LEM can now be programmed. It is the purpose of this report to outline the means by which growth can be accomplished over the next 12 months and to delineate an operations plan for achieving objectives during this period.

II OBJECTIVES

Though the operations plan that follows covers only a relatively short period ahead, the development of LEM, during this short period of 12 months, is projected with a view towards certain long-term goals. Bearing this in mind, the actions to be taken are predicated on the following objectives:

1. The development of a total in-house manufacturing capability (except for highly specialized surface finishing, heat treatment and the like).

2. The expansion of LEM's staff as necessary for the realization of goals.

3. The development of an organization of commission sales representatives to cover the entire continent.

4. The expansion of the product line by internal development and/or acquisition of compatible control devices.

5. Achievement of a stable, recognized position as a manufacturer of precision clutches, brakes, and other control devices.

6. Achievement of $300,000 sales during the next fiscal year with pre-tax profits of $50,000.

7. The undertaking of "joint ventures" in the controls field with other segments of the Twin Disc organization.

VI MARKETING PLAN

1. Direct Sales

   a. Call on previous customers and those previously quoted who are known to be good prospects.

b. Make other direct calls as required.

c. Whenever possible, direct calls are to be dovetailed with visits to sales representatives.

2. Sales Representatives

a. Continue to advertise for suitable representatives.

b. Respond to "lines wanted" ads.

c. Concentrate on the following territories: California, New England, Florida, Texas, Missouri.

d. Sign up representatives for entire U.S.A. and Canada.

e. Establish schedule for regular field visits with representatives.

3. Space Advertising

a. Set up budget of $3,000 for space ads.

b. Arrange with agency for the following schedule:

August - Electromechanical Design
September - Design News
October - Machine Design
November - Electromechanical Design
December - Product Design and Development

c. Establish better procedure for sending product catalog to every bingo card request with copy of lead to appropriate representative.

4. New Product Releases

a. Follow up first release which was sent out in May with additional releases no more than two months apart.

b. Second release to describe general line and offer "off the shelf" delivery.

c. Subsequent releases to be planned to mash with space ads.

5. Technical Articles

a. Begin effort to place a meaningful article in a respected publication by January 1969.

b. Plan more active participation in technical societies with a view toward publication of design papers.

DLF EXH. LL

LEM INSTRUMENT CORPORATION

20 SARAH DRIVE
FARMINGDALE, NEW YORK 11735
TEL: 516 293-7240

PROJECTED STATEMENT OF INCOME & COST OF SALES
YEAR ENDING JUNE 30, 1969

Sales of Products		$300,000
Cost of Sales		
Payroll	$95,000	
Direct Materials	60,000	
Printing & Stationery	500	
Supplies & Indirect Materials	1,000	
Telephone	1,400	
Expendable Tools	1,500	
Repairs & Maintenance	500	
Travel & Related Expenses	12,000	
Sales Commissions	21,000	
Advertising	6,000	
Catalogs	2,500	
Postage	400	
Professional Services	1,800	
Utilities	1,000	
State & Local Taxes	1,000	
Rent	3,000	
Welfare & Fringes	21,000	
Plant Improvements	800	
Insurance other than Welfare	800	
Interest Charges	4,800	
Shipping & Misc.	1,000	
Contingency	10,000	
	$247,000	
Depreciation	3,000	
Total Expense		250,000
Net Profit		$50,000

LEM INSTRUMENT CORPORATION
STATEMENT OF INCOME
EIGHT MONTHS ENDED JUNE 30, 1968

SALES		$ 5,144.40
EXPENSES:		
SALARIES AND BENEFITS	$27,156.92	
FACTORY	3,179.94	
ADMINISTRATIVE	1,430.35	
SELLING	63.55	
MATERIALS	401.48	
DEVELOPMENT	20.40	
INTEREST	781.96	
TOTAL EXPENSES		33,034.60
NET LOSS		$27,890.20

BALANCE SHEET JUNE 30, 1968

Assets:			
Current assets			
Cash		$23,130.43	
Accounts receivable		1,619.40	
Inventories		1,826.18	
Total current assets			$26,584.01
Fixed Assets:			
Machinery and equipment	$9,187.88		
Furniture and fixtures	623.68		
Leasehold improvements	346.80	10,158.36	
Accumulated depreciation and amortization		767.92	9,390.44
			$35,974.51
Liabilities and Stockholders' Deficiency:			
Current liabilities			
Accounts payable		$ 2,707.65	
Accrued liabilities		2,824.52	
Total current liabilities			$ 5,532.17
Long-term debt			75,000.00
Stockholders' deficiency			
Common stock		120.00	
Paid-in surplus		21,671.50	
Deficit		(66,349.22)	
Total stockholder deficiency			(44,557.65)
			$35,974.51

Distribution: FL; RE; TWN (3);

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-DEF. EXH. MM - Letter dated July 29, 1971
(Introduced p. 368)

CC: (W. D. Gibson) R. T. Howell,
D. E. Beaton

243 Garden Street
Westbury, L. I., New York 11590
July 29, 1971

Twin Disc Corp.
1328 Racine Avenue
Racine, Wisconsin

Attn: Mr. John Batten, President

Dear Mr. Batten:

I am sure that you are aware of the fact that I have been "fired" from my position at Lem Instrument Corp., one of your subsidiaries, and that Mr. Gibson has appraised you of the situation that precipitated my discharge, after which, at the request of Bob Everette as a personal favor to him, I returned temporarily to finish up work in process, with the understanding that it would not be a permanent return since I would no longer subject myself to the continuous and uncalled for abuse from Frank Lowell.

During the several weeks which it took to complete and document the aforementioned in-process work, I was paid on an hourly basis rather than on a straight salary basis as in the past, after which I was asked to reconsider and return permanently and I would not because of his treatment of and to me during the term of my employment, and the reasons previously mentioned.

I was asked to return the following week for the balance of monies due me and I did, only to find I was paid neither my earned vacation pay nor the customary severance pay.

During my visit with Mr. Gibson at his office in Racine (paid for at my own expense), I was assured that it was the policy of Twin Disc Corp. to pay anyone discharged two (2) weeks severance pay and earned vacation pay, and that this policy would be followed by Lem Inst. Corp.; however, Mr. Lowell has seen fit to disregard this policy at his own discretion.

Furthermore, Mr. Lowell has committed an even more unethical act of falsely reporting to the United States Unemployment Insurance authorities that I resigned of my own accord for the purpose of forming my own business, which was a deliberate and malicious untruth.

This libelous course of action on his part has caused me to be considered ineligible to receive unemployment benefits.

While I am pursuing employment, and am ready and willing to work, I am at the present unemployed and because of Mr. Lowell's false statements, I am being denied rights granted to most Americans, causing my savings to deplete and necessitating selling my shares in Twin Disc Corp. in order to sustain myself and my family temporarily.

DEF. EXH. MM

The reasons for the aforementioned unethical, vicious and libelous course of action on the part of Mr. Lowell escape me, especially in view of my many contributions to Lem Instrument Corp. during the period of my employment, and our supposed past friendship.

All of the statements made by me in this correspondence may be substantiated by others who were present at the time of the incident.

I hope this letter will stimulate a review of the situation and the proper course of action will be taken.

Thanking you in advance, I remain,

Yours truly,

Joseph Samuel

JOSEPH SAMUEL

cc: Mr. W. Gibson

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DEF. EXH. QQ - Memo dated
Feb. 18, 1972 (Page 414)

D. J.

LEM INSTRUMENT CORPORATION
20 SARAH DRIVE • FARMINGDALE, NEW YORK 11735 • TEL: 516 293-7540

February 18, 1972

TO: Mr. Frank Lowell

SUBJECT: SHAFT ENCODER LITERATURE

Dear Frank:

I would like to point out a few examples where I think more details and application data would help us increase our market penetration.

Hughes Aircraft Industrial Products Division (Oceanside, California) are manufacturing resistance welding devices for very fine wires for integrated circuits, etc. Bill Hill, Engineer, requests application data showing how our encoder works in conjunction with preset positioners. He would like to incorporate in his machine.

Burke Porter Machinery Company, Grand Rapids, Michigan, would have an easier time using our encoders and preset comparator if we had application data on the coupling to use, load contacts available, coincidence light, size and shape, wire size including O.D., and ability to pull our wire through conduit with other wires. Also, information on mating plugs would be helpful.

Aerojet General Corp., Frederick, Maryland, Howard Miller, said he could not consider using our encoder for his auto stacking system without further engineering details. They are currently using contacting encoders. You have a memo on this.

Of course, Automated Functions of Bladensburg, Maryland, John Haddock, wanted pictures of our wave shape taken from oscilloscope pattern so he could properly interface with his electronics. He also liked the three type of industrial cases provided by Trump Ross which showed various types of shaft loading and allowed environmental and shock protection.

Again, we would have made better progress with Eanco, Hatboro, Pa., if we could have made our story more credulous with supporting facts and figures.

Estimate life figures are on most encoder manufacturers' literature. I think this lack on our information may sometimes be a deterrent to our securing business. For example, Bob Goez of Boyston Engineers of Chicago, is going to select LEM because we have longer life. If he asks us to put "longer life" in writing, we are going to have a sticky wicket.

Best regards.

Gordon Danhof/cb

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DEF. EXH. RR

X

February 28, 1972
(typed 3/29/72)

Mr. W. B. Gibson

NOTES FROM VISIT TO LEM (2-22-72 and 2-23-72)

Dear Bill:

I thought I would pass on a few observations and thoughts about LEM.

(1) Everett and I had dinner together 2-22-72 at his request. He wants to give the machinist, Bill, a raise of $15 per week and Frank will not approve. He also feels Lowell is trying to get him to resign. He wants your opinion of what Frank's legal position would be if Everett did resign. Would Lowell's contract be still in force? He voluntarily told me many things. I told him he should talk to you. I feel he is loyal to Twin Disc and we can depend on him to remain loyal if this is our wish.

(2) Joe Samuel and Bob were both after Frank to Life Test encoders so that data could be publisned.

(3) Frank asked me not to write any more memos like the one I wrote 2-18-72 entitled "Shaft encoder literature". He said "these things should be verbal" as too many people question him about them. Further proof of the need for literature is shown by one encoder bought by Sandia Corp., Albuquerque, N.M. for which they bought an E.R.C. comparator. They are having trouble interfacing our encoder with the ERC unit. If Frank had published the data sheet on comparators I wrote November '71, we could have sold the comparator, too.

(4) We are going to to through a traumatic session with our customer in Grand Rapids, Michigan because we must now clarify what we have sold them. Frank is taking a rather stubborn attitude about this. He cannot place himself in a position to see what the customer needs. The customer is Burke Porter Machinery Co. I feel this exercise may end up helpful if Frank will see what is needed to operate machinery. Again, we need printed literature and specs.

(5) I am encouraged by an order for 10 more encoders which came in while I was in New York. Customer is P.A.R., Minneapolis.

(continued)

NOTES FROM VISIT TO LEM (2-22 & 2-23-72)

2-28-72

(6) I am also encouraged by call backs to LEM from Texas Instruments for clutches. They asked for me first which shows my calls were effective. Sperry Rand from Phoenix sent prints for clutches into LEM.

(7) Frank appears willing to pursue M & M Precision's rotary table control.

Gordon Danhof

eb

DEF EX. WW-1 Letter Dated January 20, 1972 (Introduced p. 491)

RACINE, WISCONSIN
53403 U. S. A.
TEL. (414) 634-1981

AIR MAIL

TWIN DISC
INCORPORATED

CABLE ADDRESS
"TWINCO"
TWX 910-271-2384
TELEX 02-6737

ADMINISTRATIVE OFFICES

PERSONAL & CONFIDENTIAL

20 January 1972

Mr. Frank Lowell
Lem Instrument Corporation
20 Sarah Drive
Farmingdale, New York 11735

Dear Frank:

Your December 1971 report arrived yesterday, the day after my letter follow-up was dictated.

It is gratifying to see your actual sales for six months exceeding forecast by $1370 but it does appear that it will be tough sledding from here on in through 30 June 1972 to meet the forecast of $132,600.

The forecasted acceleration in sales from January through June was obviously based upon your plan to have three territories signed up with sales reps by 31 December and the entire country by the end of March 1972.

Since this portion of your plan has failed to materialize as of 15 January, the date of your report, I find it hard to believe you will attain the increased direct sales exposure in time to meet your sales forecast through June.

I sincerely believe your sales projections could have been met with the increased exposure planned and for that reason I find the light treatment in your report of this important subject to be unsatisfactory. Your Board approved your plan and willingly authorized the funding of it.

I think we should know:

a) How many replies you have received.

b) How many have been interviewed and why they were rejected.

c) Your current schedule and the possibility of being on schedule by 31 March.

(continued)

DEF. EXH. WW

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AIR MAIL

FROM: TWIN DISC, INCORPORATED

TO: Mr. Frank Lowell

SHEET NO. 2

DATE 20 Jan 72

d) How the delay in this plan will affect your sales projections through 30 June.

Frank, I must have this kind of support from you as your intermediary. I'm leaving too much of my britches on the fence.

Sincerely,

TWIN DISC, INCORPORATED

Bill

Wilton B. Gibson
Vice President
Corporate Development

WBG:eb

CERTIFICATION OF MINUTES

SIDNEY BOBBE, an attorney duly admitted to practice under the laws of the State of New York, do hereby affirm pursuant to the rules of this Court, that he has duly served a copy of the minutes in the within action upon the respondent, and said transcript has been settled.

January 7, 1974.

SIDNEY BOBBE